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## APPENDIX I.

### PRESENT TAX REFUND LAW OF PORTO RICO.

#### AN ACT

PROVIDING FOR THE PAYMENT OF TAXES UNDER PROTEST; ESTABLISHING A PROCEDURE TO AUTHORIZE THE COLLECTION AND RETURN THEREOF; TO REPEAL ACT NO. 9 OF JUNE 23, 1924, AND ACT NO. 84, APPROVED AUGUST 20, 1925, AND FOR OTHER PURPOSES. (Laws of Porto Rico, 1927, pp. 122-126).

*Be it enacted by the Legislature of Porto Rico:*

Section 1.—Whenever a taxpayer believes that he should not pay any tax or part thereof, he shall, however, be obliged to pay the same in full upon request of the collector of internal revenue of his district, or of the official in charge of the collection of taxes, and shall he desire to make any claim, shall ask the said collector or the said official in charge of the collection of taxes, on making payment to endorse the tax receipt, specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

Section 2.—After payment is made, the collector of internal revenue or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax paid under protest, which said amount shall be deemed to be receipts from any taxes, and the amount thereof shall be used to meet the requirements of the Treasury of Porto Rico, and that part of the tax paid under protest belonging to the respective municipalities in accordance with law shall be paid by the Treasurer of Porto Rico to the said municipalities; and whenever a final decision is rendered in a suit for the refunding of the taxes paid under

protest, if adverse to The People of Porto Rico, that part of the tax to be refunded by the municipality or municipalities shall be deducted by the Treasurer of Porto Rico from any taxes which, for the following fiscal year, are to be paid to the municipality or municipalities; *Provided*, That such deduction shall be made one-half in the first semester and the other half in the second semester of the following fiscal year.

Section 3.—A taxpayer who shall have paid under protest the whole or part of any tax may, within the term of one year from the date of payment, sue the Treasurer of Porto Rico in an insular court of competent jurisdiction, or in the District Court of the United States for Porto Rico, to secure the return of the amount protested. The Attorney General shall represent the Treasurer of Porto Rico in such suits. Upon the filing of the complaint, if it be filed in an insular court, it shall follow the procedure, conditions and requirements provided by the Code of Civil Procedure in an ordinary action. When the case is ready for trial, the court shall fix the day for the trial thereof, on petition of any of the parties, with preference to any other matter pending before it. When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against any fund in the Treasury not otherwise appropriated plus interest on such amount at the rate of six (6) per cent per annum, computed from the date of the filing of the complaint in the court or on the petition of the taxpayer, the Treasurer shall credit him with the total amount to be returned, to be applied to the payment of any tax already due and unpaid or to become due in the future; *Provided*, That said credit may be transferred by the taxpayer, and then the Treasurer of Porto Rico shall credit it to the assignees, for all purposes of the law. Costs, expenses and attorney's fees shall be imposed in the discretion of the court in the same manner as in all other civil cases.

Section 4.—Any party may take an appeal in accordance with the provisions of the law for appeals in civil cases.

Section 5.—Any taxpayer filing a claim against the Treasurer of Porto Rico in accordance with the provisions of this Act,



shall attach to the said claim the receipt for the tax paid under protest, or a certified copy thereof.

Section 6.—Act No. 9 of June 23, 1924, and Act No. 84 of August 20, 1925, are hereby repealed, as well as all laws or parts of laws in conflict herewith; *Provided*, That any act, proceeding or right born under the protection of the laws hereby repealed, shall continue so protected by the provisions thereof, until its termination.

Section 7.—It is hereby declared that an emergency exists for the immediate taking effect of this Act, and, therefore, it shall take effect immediately after its approval.

*Approved, April 19, 1927.*

## APPENDIX II.

### FORMER PORTO RICAN TAX REFUND ACTS.

(NO. 35.)

#### AN ACT

PROVIDING FOR THE PAYMENT OF TAXES UNDER PROTEST, ESTABLISHING A PROCEDURE FOR THE RECOVERY THEREOF, AND FOR OTHER PURPOSES (Laws of 1911, p. 124).

*Be it enacted by the Legislative Assembly of Porto Rico:*

Section 1.—That in all cases in which an officer charged by law with the collection of revenue due the Government of Porto Rico, shall institute any proceeding or take any steps for the collection of the same, alleged or claimed by such officer to be due from any person, the party against whom the proceeding or step is taken shall, if he conceives the same to be unjust or illegal, or against any statute, pay the same under protest.

Section 2.—Be it further enacted that, upon his making such payment, the officer or collector shall pay such revenue into the Treasury of Porto Rico, giving notice at the time of the payment to the Treasurer, that the same was paid under protest.

Section 3.—Be it further enacted that, the party paying said revenue under protest may, at any time within thirty days after making said payment, and not longer thereafter, sue the said Treasurer for said sum, for the recovery thereof in the court having competent jurisdiction thereto; and if it be determined that the same was wrongfully collected as not being due from said party to the Government, for any reason going to the merits of the same, the court trying the case may certify of record that the same was wrongfully paid, and ought to be refunded, and thereupon the Treasurer shall repay the same, which payment shall be made in preference to other claims on the Treasury. Either party to said suit shall have the right of appeal to the Supreme Court.

Section 4.—Be it further enacted that, there shall be no other remedy in any case of the collection of revenue or attempt to collect revenue illegally.

Section 5.—Be it further enacted that, no writ for the prevention of the collection of any revenue claimed, or to hinder and delay the collection of the same, shall in any wise issue, either supersedeas, prohibition, or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, and none other.

Section 6.—Be it further enacted that, Section 12 of the Act of March 8, 1906, entitled "An Act to define injunctions and to prescribe when they may be issued, and to repeal an Act authorizing injunctions, approved March 1, 1902, and all laws in conflict herewith," is hereby amended so as to read as follows:

Section 12.—An injunction may be granted, upon the petition of The People of Porto Rico, to enjoin and suppress the keeping and maintaining of a common nuisance. The petition shall be verified by the fiscal of the district in which the common nuisance exists, or by the Attorney General, upon information and belief, and no bond shall be required.

Section 7.—Be it further enacted that, this Act shall take effect immediately upon its approval.

*Approved March 9, 1911.*

(NO. 76.)

AN ACT

TO AUTHORIZE SUITS AGAINST THE PEOPLE OF  
PORTO RICO (Laws of 1916, p. 151).

*Be it enacted by the Legislative Assembly of Porto Rico:*

Section 1. The district courts of Porto Rico shall hereafter be authorized to entertain suits against The People of Porto Rico, in the following cases:

(a) Actions for damages based upon contracts entered into after this Act takes effect.

(b) Actions to recover real or personal property or an interest therein, where the cause of action arises after the passage of this Act; *Provided*, That no recovery shall be had for any damages occasioned by The People of Porto Rico prior to the time of action brought.

Section 2. No action can be brought against The People of Porto Rico unless consent thereto is expressly included within the provisions of this Act, and every consent, express or implied, given by The People of Porto Rico and not expressly included herein, is hereby revoked.

Section 3. The procedure provided by law for civil cases at law in the district courts of Porto Rico shall govern the procedure in cases arising under this Act. Appeals may be taken to the Supreme Court of Porto Rico in the same cases, in the same manner, and within the same time as appeals are taken from the judgments in civil cases at law in the district courts.

Section 4. The same fees shall be paid in cases arising under this Act, and in the same manner and time, and subject to the same regulations, as is provided by law for civil cases in the districts courts of the Island; *Provided, however*, That every plaintiff, as condition precedent to commencing such suit, must furnish a bond satisfactory to the court in the sum of \$500 in answer for costs; *Provided, further, however*, That the court may exempt such litigants as show their inability to furnish the bond from giving same.

Section 5. Attorneys' fees, disbursements and costs shall never be included in any judgment against The People of Porto Rico.

Section 6. In any action against The People of Porto Rico under this Act, The People of Porto Rico may plead that all set-offs or counterclaims and all claims for damages whether liquidated or unliquidated which it may have against the plaintiff; and if upon the whole case the court finds that claimant is indebted to the Government, judgment shall be rendered accordingly.

Section 7. It shall be the duty of the judge to render a written opinion in support of every final judgment rendered, wherein findings of fact and conclusions of law shall be stated. A copy

of each opinion shall at once be transmitted to the Attorney General of Porto Rico and to the Governor of Porto Rico.

Section 8. It shall be the duty of the Attorney General to present to the Legislative Assembly at each session a report containing a list of all of the final judgments rendered against The People of Porto Rico during the preceding year, with his recommendations concerning the payment of and compliance with the same, and no payments shall be made until the Legislature shall have specifically appropriated money for the payment.

Section 9. All actions against The People of Porto Rico shall be prescribed, if suit is not begun within one year after the cause of action arises, except that actions referring to real property shall prescribe in two years. Any person having any claim against The People of Porto Rico for any cause of action arising prior to the taking effect of this Act shall within one year after said date present a petition to the Legislative Assembly of Porto Rico requesting authorization to bring suit for said claim in the manner herein provided for in this Act, stating the maximum amount of his claim, the date when the cause of action is alleged to have arisen and any other facts, which either house of the Legislative Assembly may request.

Section 10. There shall be no remedy in any case for the collection of claims against The People of Porto Rico other than that provided by this Act, and those which are now specifically authorized by the Civil Code or by acts of the Legislative Assembly; *Provided, however,* That all such actions shall be brought only in the Insular district courts.

Section 11. No execution or other process of the court shall be granted to enforce collection of judgment against The People of Porto Rico.

Section 12. Claims against The People of Porto Rico shall not be assignable in any manner, nor shall they be subject to garnishment or attachment proceedings in any court.

Section 13. Process, and all pleadings, notices, and papers in connection with any action or proceeding against The People of Porto Rico shall be served upon the Governor and the Attorney General in the manner provided by law.

Section 14. All laws or parts of laws in conflict herewith are hereby repealed.

Section 15. This Act shall take effect on July 1, 1916.  
*Approved April 13, 1916.*

(NO. 17.)

## AN ACT

TO REGULATE THE ADMINISTRATIVE AND JUDICIAL PROCEDURE WITH REGARD TO TAXES PAID UNDER PROTEST, AND TO REPEAL THE ACT OF MARCH 9, 1911, RELATIVE TO THE SAME MATTER. (Laws of 1920, p. 124).

*Be it enacted by the Legislature of Porto Rico:*

Section 1. That whenever any taxpayer believes that he should not pay a tax because it is illegal, excessive or wrongful, he shall pay the same upon request of the collector of taxes of his district and shall request the said collector, should he desire to make any claim, to endorse the tax receipt with the statement that he pays the same under protest because he considers the tax to be illegal, excessive or wrongful, which said endorsement shall be signed by the collector.

Section 2. That any taxpayer making payment as above shall file within a term of fifteen days from and after the date of the notice of payment under protest signed by the collector, a complaint in the proper district court pursuant to the Code of Civil Procedure, against the Treasurer of Porto Rico, making pertinent allegations on the petition for such relief as he may desire to obtain from the court, that the said tax is illegal, excessive or wrongful, and he shall attach to the said complaint the protested tax receipt, a certificate from the office of the Treasurer setting forth that he has paid all his taxes, and shall file in the office of the secretary of the court pursuant to law, a bond to answer for such expenses and costs as may be caused by his claim in case of the dismissal thereof.

Section 3. That the Treasurer of Porto Rico, through the Attorney General or the law clerk or officer designated by the latter from his department, or any district fiscal of the island, shall answer the said complaint within the term provided by law for any answer and shall make therein, in their order, his allega-

tions as to the striking out of particulars of the complaint and demurrers.

Section 4. That the district court shall designate on each calendar such days as it may deem necessary to pass upon all suits for protested taxes, and shall fix the day for trial thereof without the necessity of a request therefor, and such suits shall be decided as all others, first passing upon the allegation relative to striking out particulars and upon demurrers, and then holding the hearing of the case in accordance with the rulings on such incidental questions. If the decision be in favor of the taxpayer, and the judge believes it to be just, he shall grant to the taxpayer such costs and attorney's fees as he may deem reasonable. If the decision be adverse to the taxpayer, the costs shall be taxed against him together with a reasonable amount to be fixed in the decision by way of indemnity to The People of Porto Rico for such work as may have been done in the suit by the attorney for the said People of Porto Rico, as if he had been a private lawyer, and the said costs and indemnity shall be covered into the public treasury.

Section 5. That either party to said suit may appeal from the decision of the District Court to the Supreme Court, but the appeal shall be filed within a term of fifteen days, and the statement of the case must be filed and approved within another term of fifteen days.

Upon the filing of the record on appeal in the Supreme Court together with another bond in a reasonable amount to be fixed by the Judge of the District Court, to answer for such expenses and costs as may be occasioned by the appeal, such appeal shall be prosecuted by filing the brief of the appellant within the following fifteen days, and by holding the hearing in preference to any other matter in the said Supreme Court.

In the decision of the Supreme Court the same declaration will be made as regards costs and indemnity as provided in Section 4 of this Act. Said costs shall be taxed in the sum of twenty-five dollars.

Section 6. That at any time that The People of Porto Rico shall show, through a certificate issued by the Treasurer, that the taxpayer complainant has not paid any other tax subsequently

thereto, within the time fixed by law, he shall be deemed to have withdrawn his suit with costs and with the indemnity fixed in Section 4 of this Act taxed against him.

Section 7. That from and after a tax paid under protest is received, the same shall be considered as all other revenue from taxes, the amount thereof to be applied to the obligations of the Treasury of Porto Rico, and the part of the protested tax appertaining to the respective municipalities, pursuant to law, shall be turned over to them.

Section 8. That when a decision in a suit for taxes paid under protest shall become final, if adverse to The People of Porto Rico, the Treasurer shall, upon receipt of the proper certificate from the District Court, include in such estimate as he may present to the Governor, in accordance with the Organic Act, the necessary amount to reimburse the taxpayer for such sum as shall have been fixed by the court for the illegal tax and costs.

And the part of the said tax which should be reimbursed by the municipality or municipalities among which it was distributed, shall be deducted by the Treasurer out of taxes to be turned over to such municipality or municipalities in the following year, by halves, one-half in the first semester and the other half in the second semester of the following fiscal year.

Section 9. That all amounts paid to this date by way of taxes, excises or fees, under protest, shall be transferred from the special trust fund into which the same have been covered, to general funds of the Insular Treasury.

Section 10. That the law of March 9, 1911, relative to the payment of taxes under protest, is hereby repealed.

Section 11. That this Act shall take effect ninety days after its approval.

*Approved May 13, 1920.*



(NO. 9)

AN ACT

PROVIDING FOR THE PAYMENT OF TAXES UNDER PROTEST; ESTABLISHING A PROCEDURE TO AUTHORIZE THE COLLECTION AND RETURN THEREOF; TO CREATE A SPECIAL FUND; TO REPEAL ACT NO. 17 OF MAY 13, 1920, AND FOR OTHER PURPOSES (Laws of Spec. Sess. 1924, p. 70).

*Be it enacted by the Legislature of Porto Rico:*

Section 1. Whenever a taxpayer believes that he should not pay a tax or part thereof because he understands that it is illegal, excessive or wrongful, he shall, however, have the obligation to pay the same in full upon request of the collector of taxes of his district, or of the official in charge of the collection of taxes, and shall ask the said collector or the said official in charge of the collection of taxes, should he desire to make any claim, to endorse the tax receipt specifically stating whether the said protest refers to the whole or to a part of the tax paid under protest, and setting forth the exact amount protested. The said endorsement shall be signed by the taxpayer and by the collector or officer in charge of the collection of taxes.

Section 2. After payment is made, the collector of taxes or the official in charge of the collection of taxes, shall cover the sum collected into the Treasury of Porto Rico, reporting to the Treasurer the total amount of the tax, as well as the part thereof paid under protest.

Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in the case of property taxes the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them.

The protested part shall be covered into a special fund to be known as "Taxes paid under protest—Trust Fund."

Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty

days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction, to secure the return of the amount protested. The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers.

When the case is ready for trial the court before which the action is pending shall fix the day for the trial thereof without the necessity of a request from the parties, first serving due notice on them.

When the final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against the fund "Taxes paid under protest—Trust Fund," referred to in section 3 hereof.

If the decision be favorable to The People of Porto Rico, the Treasurer shall cover from the fund known as "Taxes Paid Under Protest—Trust Fund," into the proper fund such amount of the tax as directed by the court in his decision, turning over to the respective municipalities the proportion established by law in cases of property taxes.

Section 5. Either party may appeal to a higher court by filing in the court *a quo* his appeal within ten days after the decision is rendered, as provided by section 4 of this Act; *Provided*, That if the taxpayer be the appellant he shall file, together with the petition for appeal and in the court appealed from, a bond in such sum as the court shall fix to answer for such costs, expenses and damages as The People of Porto Rico might suffer by reason of said action.

The said appeal shall be prosecuted pursuant to the provisions of law for appeals in civil cases, and the court of appeals shall hold the hearing with preference over any other matter pending before it.

Section 6. Any taxpayer filing a suit against the Treasurer of Porto Rico in accordance with the provisions of this Act shall attach to the said suit the receipt for the tax paid under protest, or a certified copy of said receipt.

Section 7. That the sum of fifteen thousand (15,000) dollars or such part thereof as may be necessary is hereby appropriated out of any funds in the Insular Treasury, not otherwise appropriated, for the payment by the Treasurer of Porto Rico of such costs as by judgment of any competent court may be allowed to any taxpayer who shall have brought suit pursuant to this Act.

Section 8. Act No. 17 of May 13, 1920, as well as all laws or parts of laws in conflict herewith are hereby repealed; *Provided*, That any action, proceeding or right arising from and exercised under the act hereby repealed, shall continue under the protection and provisions thereof until its termination.

Section 9. It is hereby declared that an emergency exists for the immediate taking effect of this Act, and therefore the same shall take effect immediately after its approval.

*Approved, June 23, 1924.*

(NO. 84.)

#### AN ACT

TO AMEND SECTIONS 3 AND 4 OF ACT NO. 9, ENTITLED "AN ACT PROVIDING FOR THE PAYMENT OF TAXES UNDER PROTEST; ESTABLISHING A PROCEDURE TO AUTHORIZE THE COLLECTION AND RETURN THEREOF; TO CREATE A SPECIAL FUND; TO REPEAL ACT NO. 17 OF MAY 13, 1920, AND FOR OTHER PURPOSES," APPROVED JUNE 23, 1924, AND FOR OTHER PURPOSES (Laws of 1925, p. 580).

*Be it enacted by the Legislature of Porto Rico:*

Section 1. That Sections 3 and 4 of Act No. 9, entitled, "An Act providing for the payment of taxes under protest; establishing a procedure to authorize the collection and return thereof; to create a special fund; to repeal Act No. 17 of May 13, 1920, and for other purposes," approved June 23, 1924, are hereby amended to read as follows:

"Section 3. The moment that a tax paid under protest is received, the part thereof not protested, if there be any, shall be considered as all other receipts from taxes, the amount of which is to be applied to the obligations of the Insular Government, and in

the case of property taxes, the part of said tax pertaining to the respective municipalities pursuant to law, shall be paid over to them. The protested part shall be covered into a special fund to be known as 'Taxes Paid Under Protest—Trust Fund,' to be held until the final decision of a court of justice is rendered upon the legality of the collection of the taxes so protested, and likewise interest at the rate of six (6) per cent on the protested part shall be covered monthly into the said trust fund, taking the sum necessary therefor out of such moneys as may be available in the Treasury of Porto Rico, for which purpose the Treasurer of Porto Rico is hereby authorized and empowered to dispose of such moneys in the Treasury of Porto Rico.

"Section 4. A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction, to secure the return of the amount protested, and summons shall be served on the Treasurer of Porto Rico and the Attorney General within thirty days after the time of filing such suit. If the said summons be not effected within the aforesaid term of thirty days, the plaintiff's suit shall be held to be dismissed and the court shall render judgment of dismissal with prejudice as between the parties. The Attorney General, or a person designated by him, shall represent the Treasurer of Porto Rico in such suits. When any case is ready for trial the court shall set a day for the trial thereof without waiting for the parties to ask for it.

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against the fund 'Taxes Paid Under Protest—Trust Fund,' referred to in Section 3 hereof, plus interest on such amount, at the rate of six (6) per cent a year, to be computed from the date on which payment under protest was made to the date on which actual return is made by the Treasurer to the taxpayer of the amount directed by the court to be returned.

"If the decision be favorable to The People of Porto Rico, the Treasurer shall cover from the fund known as 'Taxes Paid Under Protest—Trust Fund,' into the proper fund, the tax directed by

the court in its decision, turning over to the respective municipality the proportion established by law in cases of property taxes."

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. It is declared that an emergency exists for the immediate taking effect of this Act, and therefore, it shall take effect immediately after its approval.

*Approved, August 20, 1925.*

INCOME TAX LAW — ACT NO. 80 OF 1919 (Laws of 1919, pp. 664, 665).

Section 58.—Where a taxpayer is not agreed to the decision of the Treasurer he may, within the fifteen days following notice of such decision, whether such notice is served by agent or by mail, apply in writing for the reconsideration of the case, producing all such evidence as he may deem pertinent and such as may be required by the Treasurer.

Section 61.—That where the Treasurer dismisses a petition for reconsideration, or where he modifies his first decision though not in terms prayed for by the taxpayer, such taxpayer may, within fifteen days following the notification of such decision, appeal to the Board of Review and Equalization created by law, alleging in writing and under oath the facts upon which he bases his claim and the reasons of law in support thereof.

Section 63.—That the decisions of the Board of Review and Equalization shall be final. In such cases the taxpayer shall pay the tax imposed upon him, within the time fixed in Section 55, under protest, and he may interpose within ten days following such payment under protest, a sworn complaint against the Treasurer of Porto Rico and before a court of competent jurisdiction. Said cases shall be given preference and priority on the calendars of the courts, and all defenses against the complainant to be offered by the defendant shall be made at one time and in one bill, and the judge shall decide at one sole hearing in strict order of procedure. The trial shall be promptly set for final decision and any unwarranted delay on the part of the plaintiff shall be sufficient grounds for a judgment of dismissal.

Section 66.—That the Treasurer be, and he is hereby, authorized to remit, reimburse or make restitution for any tax or duty erroneously or unlawfully imposed or collected, as well as of the amount of any fine collected by error or without legal authority therefor.

That when proper claim has been made to the Treasurer of Porto Rico for the return, reimbursement or remittal of any duties or taxes erroneously or illegally levied or collected, as well as for the amount of any fines collected by error or without legal authority, if he refuses without reason to grant such a claim, the aggrieved party may appeal to the courts of justice, following therefor the procedure authorized and the proceedings established by Section 63 of this Act.

### APPENDIX III

## OPINIONS OF PORTO RICO SUPREME COURT CONCERNING RECOVERY OF PROTESTED TAXES

### Supreme Court of Porto Rico

OFFICE OF THE SECRETARY-REPORTER, SAN JUAN

IN THE SUPREME COURT OF PORTO RICO

PEDRO B. JESUS, *Plaintiff and*  
*Appellant,*

*v.*

JUAN G. GALLARDO, *Treasurer of*  
*Porto Rico, Defendant and Ap-*  
*pellee.*

No. 3614

} Appeal from the District  
Court of Humacao

### OPINION OF THE COURT DELIVERED BY MR. JUSTICE FRANCO SOTO

San Juan, Porto Rico, July 8, 1925

Pedro B. Jesus filed a complaint in the District Court of Humacao for the refund of the sum of \$195.53 paid under protest to the Treasurer of Porto Rico as taxes.

The defendant-appellee raised the question of jurisdiction in the court *a quo*, alleging that the said court had no original jurisdiction because of the amount involved. This plea was overruled, albeit the action was dismissed on other grounds.

However, the question of jurisdiction raised and insisted on by appellee in his brief is primordial and of vital importance in this case.

On March 9, 1911, the Legislature for the first time enacted a law establishing procedure for the recovery of taxes paid under protest, section 3 thereof providing that the action should be brought "in the court having competent jurisdiction."

This Act, in relation to Act No. 76 of April 13, 1916, authorizing suits against The People of Porto Rico, was interpreted in

the cases of *Sauri & Subira v. Sepulveda*, District Judge, 25 P. R. R. 224, and *Serralles v. Treasurer of Porto Rico*, 30 P. R. R. 220. In neither of these cases cited by the lower court was it held that the Act of 1911 had been repealed by the Act of 1916. It was held rather that the two acts coexisted independently and each had its own force.

On March 13, 1920, the Legislature enacted Act No. 17 to regulate administrative and judicial procedure with regard to taxes paid under protest and to repeal the Act of March 9, 1911. Section 2 thereof provided that the taxpayer should file his complaint within the time specified "in the proper district court," thus changing the provision contained in the Act of 1911. The provision was clear. It changed by its wording the meaning of the former Act exclusively designating the district courts as having jurisdiction to entertain suits for the refund of taxes paid under protest, without regard to the amount involved. But finally Act No. 9 of 1924, by which this case is governed, re-enacted the provision of the original Act. Its section 4 is as follows:

"Section 4.—A taxpayer who shall have paid under protest the whole or part of any tax shall, within a term of not to exceed thirty days from and after the date of payment, sue the Treasurer of Porto Rico in a court of competent jurisdiction, to secure the return of the amount protested. The Treasurer of Porto Rico, through the Attorney General or through the official designated by the latter from his department, shall answer the said suit within the term granted by law for the filing of answers and shall make therein, in their order, allegations to strike out particulars of the complaint and demurrers. • • •"

It may be presumed that when the Legislature varied the terms of the Act of 1920 on that point it showed a clear intention of not conferring upon the district courts exclusive jurisdiction of such actions, but that the jurisdiction was to be determined by the amount involved, following therefor the general Act of March 10, 1904, Comp. 1911, p. 262. And undoubtedly it was considered that it would not be equitable or just to compel a taxpayer to resort to a district court to recover small sums, authorizing him to



sue in the proper municipal court, provided the amount involved did not exceed \$500, including interest. Section 1173, Comp. 1911, p. 265.

For the reasons stated the judgment appealed from should be modified so that its dispositive part may read as follows: "The demurrer to the jurisdiction is sustained and the complaint is dismissed without special imposition of costs," and, as so modified, the judgment is affirmed.

(Signed) CARLOS FRANCO SOTO,  
*Associate Justice.*

I, JOAQUIN LOPEZ, Secretary-Reporter of the Supreme Court of Porto Rico, CERTIFY: That the foregoing is a true and correct copy of its original as the same appears on file and of record in my office; and at the request of the Attorney General of Porto Rico, for official use, I issue this certificate under my hand and Seal of the Supreme Court, in San Juan, Porto Rico, this 17th day of November, 1926.

(Signed) JOAQUIN LOPEZ,  
*Secretary-Reporter of the Supreme Court of Porto Rico.*

UNION CENTRAL LIFE INSURANCE COMPANY,  
PLAINTIFF AND APPELLANT, v. GROMER,  
TREASURER OF PORTO RICO, DEFENDANT  
AND RESPONDENT.

Appeal from the District Court of San Juan, Section 2,  
in an action for the refund of taxes paid under protest.

Motion of respondent for reconsideration.

No. 824.—Originally decided June 27, 1913.

Motion for reconsideration decided January 31, 1914.

On June 27, 1913, this court rendered judgment in the above-entitled case reversing the judgment of the District Court of San Juan, Section 2, of October 31, 1911, and decreeing that the plaintiff company recover from the Treasurer of Porto Rico the sum of \$3,621.73, with legal interest from June 23, 1911, when the complaint was filed, without special imposition of costs.

The Treasurer of Porto Rico filed a motion on October 10 last for a reconsideration of the judgment, praying that it be modified by striking out the words 'with legal interest from June 23, 1911, when the complaint was filed,' and allowing its other pronouncements to remain in force.

In accordance with the doctrine laid down by the Supreme Court of the United States, we must recognize that the action is really against The People of Porto Rico although in form the Treasurer of Porto Rico is the defendant. *Smith v. Reeves*, 178 U. S. 436; *Fitts v. McGhee*, 172 U. S. 516; *Reagan v. Farmers' Trust Co.*, 154 U. S. 362; *Virginia Coupon Cases*, 114 U. S. 270; *Hagood v. Southern*, 117 U. S. 52; *In re Ayers*, 123 U. S. 443; *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446.

The people of Porto Rico being the real defendant, we must consider whether it should be adjudged to pay to the plaintiff interest on the sum which, according to the aforesaid judgment, it is obliged to refund.

• • • • •

By Act No. 35 of March 9, 1911, The People of Porto Rico consents to be sued only for the amount illegally collected as taxes, but does not consent to be sued for the interest thereon, because if such had been its intention it would have so stated expressly in the said act, which as a special act regulates the present case, and we are not permitted to invoke the provisions of the Civil Code in order to establish an obligation which The People of Porto Rico did not see fit to impose upon itself.

• • • • •

For the foregoing reasons that part of our judgment of June 27, 1913, decreeing that the plaintiff recover from the Treasurer of Porto Rico legal interest on the sum of \$3,621.73, which the latter was ordered to refund, is set aside and the rest of the judgment will remain in force.

*Judgment of June 27, 1913, modified by striking out the pronouncement regarding interest.*

Justices Wolf and Aldrey concurred.

Mr. Justice del Toro took no part in the decision of this motion."

Union Cent. Lf. Ins. Co. v. Gromer, 20 Porto Rico Rep. 80.

SAURI & SUBIRA, PETITIONERS, v. SEPULVEDA, DISTRICT JUDGE, RESPONDENT (PEOPLE, INTERVENOR).

*Petition for Certiorari to the judge of the District Court of Ponce in an action for the recovery of taxes paid under protest.*

No. 173—Decided May 12, 1917.

Mr. Justice Hutchinson delivered the opinion of the court.

This is a suit brought by a taxpayer against the Treasurer of Porto Rico in accordance with the provisions of an act entitled "An Act providing for the payment of taxes under protest, establishing a procedure for the recovery thereof, and for other purposes," approved March 9, 1911.

Defendant moved to quash the summons for reasons stated as follows:

"That although it is said in the complaint that this suit is brought by Sauri and Subira, plaintiffs, against Charles F. Hill, Assistant Treasurer, now Acting Treasurer of Porto Rico, the action, in point of fact, is established against the People of Porto Rico (Union Central Life Ins. Co. v. Cromer, 20 P. R. R. 80).

"That, as appears from the return • • • the same" (summons) "was served upon • • • Acting Treasurer of Porto Rico.

"That in accordance with Section 13 of Act No. 76, approved April 13, 1916, to authorize suits against The People of Porto Rico, 'process and all pleadings, notices, and papers in connection with any action or proceeding against the People of Porto Rico shall be served upon the Governor and the Attorney General in the manner provided by law'; and as shown by the summons in this case none of these requirements were complied with."

The ruling of the district court sustaining this motion is before us by certiorari (pp. 224-225).

• • • "Section 13 is copied *verbatim* in the motion to quash, *supra*. Manifestly, on its face it includes an action of

this kind \* \* \*; for if the suit against the Treasurer \* \* \* is an "action or proceeding against The People of Porto Rico," as beyond all cavil it is, and as this court has held it to be (*Union Central Life Insurance Company v. Governor*, 20 P. R. R. 80), then to continue in force such implied repeal of subdivision 5 of Section 93 of the Code" (that if the suit is against the government of Porto Rico the summons must be served upon the Governor) "would to that extent contradict the plain and unmistakable terms of the latest unqualified expression of the legislative will in this regard (p. 231).

\* \* \* The contention that the present proceeding, although in fact and in substance an action against the People of Porto Rico, is in form against the Treasurer of Porto Rico, simply draws a superficial distinction, without establishing any fundamental difference. It is not, nor can it be, urged that prior to 1911 a suit of this kind, or any suit the result of which, if successful, would be to transfer money from the Insular Treasury into the pockets of plaintiff, could have been maintained against the Treasurer of Porto Rico upon the theory that such a suit, being in form against the Treasurer, is not an action against the People of Porto Rico. The law of 1911 is a formal consent by The People of Porto Rico to be sued for the recovery of taxes paid under protest. Except for the specific recognition and ratification of such consent contained in section 10 of the law of 1916, unquestionably the whole of the law of 1911 would have been repealed by the sweeping terms of Section 2 of the later enactment. Indeed, it would seem much more accurate, although somewhat paradoxical, to say that the only logical effect of the two sections construed together in the order in which they occur in the text is to operate a simultaneous repeal and re-enactment or continuation of the law of 1911, subject, however, to the restrictions, limitations, and modifications indicated in the context.

Certainly it cannot be contended that the legislature in 1916 did not have in mind the law of 1911, and to say that suits previously authorized in form against the Treasurer or any other officer of the Government, in his representative capacity, were not intended to be included in the provisions of Section 13, would be simply to annex thereto, by judicial legislation, a proviso that the legislature in its wisdom did not see fit to add. \* \* \*

But it can hardly be said that the question of repeal by implication is necessarily involved in this case, and perhaps more stress has been laid thereon than can be justified by the actual situation. The form of the action authorized in 1911 is not affected at all by the law of 1916, which neither in letter nor in spirit negatives either the idea of a suit in form against the Treasurer or the incidental service of summons upon him, \* \* \*. Its provisions as to process are affirmative, not negative; cumulative and complementary, not derogatory. Both statutes can stand together in perfect harmony in so far as this feature is concerned and should be construed, each in connection with the other, to require a triplicate service of the summons upon the Governor, the Attorney General and the Treasurer, instead of upon the Treasurer alone or upon the Governor and the Treasurer, as the case may have been prior to the later enactment.

The order of the district court quashing the summons served on the Treasurer and requiring an amended complaint should be annulled and the ruling upon which such order was based in so far as it holds service upon the Governor and Treasurer to be necessary should be affirmed.

*Petition granted.*

Chief Justice Hernandez and Justices Wolf, del Toro, and Aldrey concurred (pp. 232-234).

Sauri and Subira v. Sepulveda, 25 P. R. R. 224.

AMERICAN RAILROAD COMPANY, PLAINTIFF  
AND APPELLANT, v. TREASURER OF PORTO  
RICO, DEFENDANT AND APPELLEE.

Appeal from the District Court of San Juan in an Action for Refund of Taxes Paid under Protest.

No. — Decided ———, 1922.

Mr. Justice Wolf delivered the opinion of the court.

This appeal involves principally the construction of Section 6 of Act No. 17, approved May 13, 1920, as follows:

"Section 6.—That at any time that The People of Porto Rico shall show, through a certificate issued by the Treasurer, that the taxpayer complainant has not paid any other tax subsequently thereto, within the time fixed by law, he shall be deemed to have withdrawn his suit with costs and with the indemnity fixed in Section 4 of this Act taxed against him."

The second amended complaint bears date March 15, 1921, and recited that certain taxes assessed against the complainant were paid under protest. On the 5th of April, 1921, the Treasurer moved to dismiss the complaint by virtue of Section 6, *supra*, showing, among other things, that the taxes for the first and second semesters of the fiscal year 1920-1921 had not been paid. The District Court of San Juan, Second Section, rendered judgment dismissing the complaint and the appeal is from the said judgment.

The appellant maintains that as said Section 6 only went into effect in August, 1920, its terms would only be applicable to the second semester of 1920-1921, and that this tax did not fall due until January, 1921. We agree with the appellee that even the first semester was payable up to September, 1920; but the appellant was in any event bound for the taxes due for the second semester payable on the first of January, 1921.

But the appellant also for the first time on appeal says:

"But the main reason why the judgment of the district court should be annulled is to be found in the deficiency of the Act of 1920, which provides no guaranty for the taxpayer, inasmuch as the refunding of his money is left to the discretion of the legislature."

There was no assignment of error, but aside from that, this question raised for the first time on appeal comes too late. *Kent v. People of Porto Rico*, 207 U. S. 113; *Torres v. Lothrop*, 231 U. S. 171; *Porto Rico Benevolent Society v. Municipality of Ponce*, 28 P. R. R. 403, and cited cases; *Torres v. Lothrop*, 16 P. R. R. 175. As the appellee points out, this alleged error is set forth in its brief without argument or relation of authorities.

The judgment appealed from must be *Affirmed*.

Chief Justice del Toro and Justices Aldrey and Hutchison concurred.

Am. R. R. Co. v. Treasurer of Porto Rico, 30 Porto Rico Rep. 202.

SERRALLES, PLAINTIFF AND APPELLANT, v.  
TREASURER OF PORTO RICO, DEFENDANT  
AND APPELLEE.

Appeal from the District Court of San Juan in an Action for Refund of Taxes.

No. 2603—Decided March 17, 1922.

Mr. Chief Justice del Toro delivered the opinion of the court.

This is an appeal from the judgment rendered in an action brought by Juan Eugenio Serralles against Jose E. Benedicto, Treasurer of Porto Rico, for the refund of taxes unlawfully collected.

In his declaration for the year 1918 the plaintiff declared an income of \$119,768.32. Of this \$108,022.78 was his share of the profits of the partnership of Succession of J. Serralles. The laws in force in 1917 and 1918 were different as regards the rate fixed in the ascending scale of income. The tax in 1918 was higher. The Treasurer computed the tax as if all of the income declared had been received in 1918. The plaintiff paid without protest and thereafter, on August 2, 1920, wrote a letter to the Treasurer stating that of the income declared \$76,015.18 had been received in 1917 and that therefore the tax on this sum should be calculated in accordance with the law in force that year and not according to the law in force in 1918, as had been done. He concluded by asking for a refund of the \$7,708.30 which for that reason had been collected in excess. The Treasurer replied on August 10, 1920, refusing the request because the income had been received by Serralles as the result of a balance struck on April 30, 1918, and that was the day on which he validly acquired it, the fact that the balance covered a period of one year ending on that date being unimportant. Serralles then brought this action by a complaint dated August 17, 1920.

The Treasurer pleaded that the complaint did not state facts sufficient to constitute a cause of action and the demurrer was overruled. He then filed a motion for dismissal of the complaint because of failure to give the security required by Section 4 of Act No. 76 of 1916, and also filed an answer. The case was tried and submitted for judgment on April 27, 1921.

At this juncture, on August 26, 1921, the district court entered judgment dismissing the complaint based exclusively on the motion relative to the giving of security which had remained pending. *The district court considered this to be an action against The People of Porto Rico* and that before commencing it the plaintiff should have furnished the bond required by Section 4 of Act No. 76 of 1916.

*The plaintiff appealed from the judgment of August 26, 1921, and alleged that the court erred in applying to this case said Act No. 76 of 1916 when the law really applicable to it is Act No. 80 of 1919.*

*We believe that the appellant is right.* Act No. 76 of 1916 authorizes actions against The People of Porto Rico according to its own terms and although in proper cases an action for the refund of taxes may be considered an action against The People of Porto Rico, to which Section 4 of Act No. 76 of 1916 may be applicable, when such an action is brought exclusively under a special law which is complete in itself, it is sufficient to comply with the terms of that law. And that is actually the case before us.

This is an action for the refund of an income tax. Act No. 80 of 1919 was enacted to provide revenues for The People of Porto Rico through the levying of certain income taxes. Section 57 thereof provides that the Treasurer shall compute the amount of the tax and give notice of the result to the taxpayer. Section 58 confers upon the taxpayer the right to request the Treasurer to reconsider his decision. Section 59 determines what the Treasurer shall do in such a case. Section 61 gives the taxpayer the right of appeal to the Board of Review and Equalization in case the Treasurer's decision is still adverse to him. Section 62 prescribes the procedure to be followed before the board and the powers of the board. And Section 63 provides that if the board's decision is adverse to the taxpayer he shall pay the tax under protest and may bring an action against the Treasurer of Porto Rico before the proper district court for a final determination of the matter. But that is not all. After establishing this complete system, Section 66 of the Act provides as follows:

"Section 66.—That the Treasurer be, and he is hereby, authorized to remit, reimburse, or make restitution for any tax or duty erroneously or unlawfully imposed or collected, as well as of the amount of any fine collected by error or without legal authority therefor.

"That when proper claim has been made to the Treasurer of Porto Rico for the return, reimbursement or remittal of any duties or taxes erroneously or illegally levied or collected, as well as for the amount of any fines collected by error or



without legal authority, if he refuses without reason to grant such a claim, the aggrieved party may appeal to the courts of justice, following therefor the procedure authorized and the proceedings established by Section 63 of this Act."

The plaintiff relied on that statute in resorting to the court in this case. That fact is admitted by the defendant-appellee in his brief. Act No. 80 of 1919 requires no previous security to be given and the wording of Section 4 of Act No. 76 of 1916 does not warrant the inference that it was the intention of the Legislature to make it applicable to all actions theretofore authorized against The People of Porto Rico and even to such actions as might be authorized in the future, generally or specially.

This being so, the sole ground on which the judgment of the district court was based has no foundation.

The appellee insists that the complaint does not adduce facts sufficient to constitute a cause of action. He alleges that in addition to Section 66 of Act No. 80 of 1919, Sections 61, 62, and 63 thereof are also applicable, and that inasmuch as it is not alleged in the complaint that an appeal was taken to the Board of Review and Equalization, or that the tax was paid under protest, the plaintiff has no right of action.

We do not entertain this view. It is true that Section 66 prescribes that the action shall follow the procedure authorized and the proceedings established by Section 63, but this clearly refers to the time within which to bring the action, to the title of the complaint and to the manner of prosecuting the action in court, all of which is to be found in Section 63, and it is not necessary to supplement the intent of the legislators by the provisions of Sections 61 and 62. Clearly the cases are different. The law is liberal and affords ample opportunities for correcting any error or repairing any injustice; first, when the taxpayer takes the first step and, second, when after the tax is levied and collected without difficulty or protest the taxpayer requests the refund of what in his opinion was unlawfully collected from him.

Having reached the foregoing conclusions, what should be our decision? It is necessary still to consider the case on its merits. The district court did not do this. The parties do not discuss the

question in their briefs. We might perhaps set a day for a new hearing in order to give the attorneys an opportunity to argue the case, but it seems to us that under all the circumstances it is more appropriate and fair to reverse the judgment appealed from and remand the case for further proceedings. In this manner we shall give due opportunity to the lower court, which under the law should first have it.

*Reversed and remanded.*

Justices Wolf, Aldrey, and Hutchison concurred.

Serralles v. Treasurer of Porto Rico, 30 Porto Rico, Rep.  
220.

#### APPENDIX IV.

#### EXTRACT FROM RESPONDENT'S BRIEF IN THESE CASES, ON REHEARING IN THE CIRCUIT COURT OF APPEALS—"ADEQUATE REMEDY AT LAW."

##### I AND II

Appellants' first and second points may conveniently be considered together. They allege that the decision of this court of March 15, 1921, in the *Camunas* case (*Camunas v. Porto Rico Ry. Lt. & Power Co.*, 272 Fed. 924) is applicable and controlling upon the question whether the taxpayers' right to sue for the return of taxes paid under protest under the later Porto Rican Acts of June 23, 1924 (Act No. 9), and August 20, 1925 (Act No. 84), provides "a plain, adequate, and complete remedy at law for the recovery of taxes paid under protest and which was open to the appellants in all of these cases" as held by this court in its opinion of September 25, 1926, in these cases (Opinion, p. 6); and that the present decision of this court is also contrary to that of the Supreme Court in *Risty v. Chicago, Rock Island and Pacific Ry. Co.*, *supra*, 270 U. S. 378, 388, 389, because (as appellants now claim) those Acts of 1924 and 1925 "expressly confine a taxpayer to the Insular Courts, and exclude him from the Federal court in suing for the recovery of a tax paid under protest."

The determination of these questions involves an examination of the course of legislation and of the decisions of the Insular Courts concerning suits for the return of taxes paid under protest.

(For the convenience of the court we are printing in the Appendix hereto copies of the pertinent Porto Rican statutes, viz., Act No. 35, March 9, 1911; Act No. 76, April 13, 1916; Act No. 17, March 13, 1920; Act No. 9, June 23, 1924; Act No. 84, August 20, 1925; with the sections of the Income Tax Act (Act No. 80) of 1919 relating to suits for refund of income taxes paid under protest; and quotations of the pertinent portions of the opinions of the Supreme Court of Porto Rico in the following cases, viz.: *Union Central Life Ins. Co. v. Gromer*, 20 P. R. R. 80 (January 31, 1914); *Sauri & Sulira v. Sepulveda*, 25 P. R. R. 224 (May 12, 1917); *Am. R. R. Co. v. Treasurer of Porto Rico*, 30 P. R. R.

202 (March 16, 1922); Serralles v. Treasurer of Porto Rico, 30 P. R. R. 220 (March 17, 1922); and Pedro B. Jesus v. Gallardo Treasurer (No. 3614, Supreme Court of Porto Rico, July 8, 1925, not yet reported; certified copy presented to this court with this brief.)

"On March 9, 1911, the Legislature for the first time enacted a law establishing procedure for the recovery of taxes paid under protest, Section 3 thereof providing that the action should be brought 'in the court having competent jurisdiction.'

"This act, in relation to Act No. 76 of April 13, 1916, authorizing suits against the People of Porto Rico, was interpreted in the cases of Sauri & Subira v. Sepulveda, District Judge, 25 P. R. R. 24, and Serralles v. Treasurer of Porto Rico, 30 P. R. R. 220. In neither of these cases cited by the lower court was it held that the Act of 1911 had been repealed by the Act of 1916. It was held rather that the two acts co-existed independently and each had its own force.

"On March 13, 1920, the Legislature enacted Act No. 17 to regulate administrative and judicial procedure with regard to taxes paid under protest and to repeal the Act of March 9, 1911. Section 2 thereof provided that the taxpayer should file his complaint within the time specified 'in the proper district court,' thus changing the provision contained in the Act of 1911. *The provision was clear.* It changed by its wording the meaning of the former act *exclusively designating the district courts as having jurisdiction to entertain suits for the refund of taxes paid under protest*, without regard to the amount involved."

Jesus v. Gallardo, *supra*, No. 3614, Supreme Court of Porto Rico, July 8, 1925.

The Act of March 9, 1911 provided (Section 2) that the officer or collector to whom taxes were paid under protest "*shall pay such revenue into the treasury of Porto Rico*, giving notice at the time of the payment to the Treasurer, that the same was paid under protest." There was *no provision* for its being paid into a trust fund or held in any separate funds. It was paid directly into the Treasury becoming there mingled with other funds of the Government of Porto Rico. The statute further provided (Section 3) for a suit by the protesting taxpayer at any time within thirty days after making such payment for the re-

covery thereof "in the court having competent jurisdiction there-to," and that

"if it be determined that the same was wrongfully collected as not being due from said party to the Government, for any reason going to the merits of the same, the court trying the case may certify of record that the same was wrongfully paid, and ought to be refunded, and thereupon the Treasurer shall repay the same, *which payment shall be made in preference to other claims on the Treasury*";

and further that (Section 3):

"Either party to said suit shall have the right of *appeal to the Supreme Court.*"

And that statute further provided, expressly, that (Section 4)

"There shall be *no other remedy* in any case of the collection of revenue, or attempt to collect revenue illegally";

and that (Section 5)

"no writ for the prevention of the collection of any revenue claim or to hinder or delay the collection of the same shall in any wise issue, either supersedeas, prohibition or any other writ or process whatever; but in all cases in which, for any reason, any person shall claim that the tax so collected was wrongfully or illegally collected, the remedy for said party shall be as above provided, *and none other.*" (Italics ours.)

As above observed, that statute provided for payment of protested taxes directly into the Treasury of Porto Rico. It made no provision for a trust fund for them, and no provision for holding them in any separate funds awaiting the result of judicial determination as to the correctness of the claim of the protesting taxpayer. A suit under that statute for the recovery of such protested taxes was therefore a

"suit the result of which, if successful, would be to transfer money from the Insular Treasury into the pockets of plaintiff," *confer* Sauri & Subira v. Sepulveda, *supra*, 25 P. R. R. 224, 232;

and it was therefore necessarily held by the Supreme Court of Porto Rico that

"In accordance with the doctrine held by the Supreme Court of the United States, we must recognize that the action is really against the People of Porto Rico although in form the Treasurer of Porto Rico is the defendant."

Union Central Life Ins. Co. v. Gromer, *supra*, 20 P. R. R. 80, 81, January 31, 1914 (citing Smith v. Reeves, 178 U.S. 436, and other decisions of the United States Supreme Court.)

Accordingly the Supreme Court of Porto Rico afterwards held that such suits for the recovery of protested taxes under said Act of March 9, 1911, were within the general scope of Act No. 76 of April 13, 1916, entitled "An Act to authorize suits against the People of Porto Rico," which (Section 1) gave to the "district courts of Porto Rico" alone, the authority to entertain suits against the People of Porto Rico, and provided (Section 2):

"No action can be brought against the People of Porto Rico unless consent thereto is expressly included within the provisions of this act, and every consent, express or implied, given by the People of Porto Rico and not expressly included herein, is here revoked,"

and that (Section 10)

"There shall be no remedy in any case for the collection of claims against the People of Porto Rico other than that provided by this Act, and those which are now specifically authorized by the Civil Code or by acts of the Legislative Assembly; *Provided, however, that all such actions shall be brought only in the Insular District Courts*";

and that the process and pleadings in any such suit should be served upon the Governor and the Attorney General "in the manner provided by law," and every plaintiff as a condition precedent to commencing such suit (Section 4) must furnish a bond in the sum of \$500.00 to answer for costs (except that the court might exempt poor litigants), and that (Section 8) it should be the duty of the Attorney General to present to the Legislative Assembly at each session a report containing a list of all of the final judgments rendered against the People of Porto Rico during the preceding year, with his recommendations concerning the payment of and compliance with the same,

"and no payments shall be made until the Legislature shall have specifically appropriated money for the payment."

This Act of 1916 came before the Supreme Court of Porto Rico in connection with the Act of 1911 in the case of Sauri and Subira v. Sepulveda, *supra*, 25 Porto Rico Rep. 224, decided May 12, 1917, wherein the plaintiff taxpayer having brought suit for the return of protested taxes under the Act of March 9, 1911, against "Charles F. Gill, Assistant Treasurer, now Acting Treasurer, of Porto Rico" in accordance with the provisions of Section 3 of the Act of March 9, 1911, providing for this suit against the Treasurer, the defendant moved to quash the summons for the reason, among others (p. 225) that in accordance with Section 13 of said Act of April 13, 1916, the action and process was against the People of Porto Rico and should have been served upon the Governor and Attorney General, instead of upon the Treasurer. The Supreme Court of Porto Rico, holding that the summons against the Treasurer under Section 3 of the Act of March 9, 1911, was proper, but that, by virtue of the Act of 1916, it was necessary to serve the summons in the suit also upon the Governor and the Attorney General, because it was a suit against the People of Porto Rico, said (pp. 232-233):

"The contention that the present proceeding, although in fact and in substance an action against the People of Porto Rico, is in form against the Treasurer of Porto Rico, simply draws a superficial distinction, without establishing any fundamental difference. It is not, nor can it be, urged that prior to 1911 a suit of this kind, or any suit the result of which, if successful, would be to transfer money from the Insular Treasury into the pockets of plaintiff, could have been maintained against the Treasurer of Porto Rico upon the theory that such a suit, being in form against the Treasurer, is not an action against the People of Porto Rico. The law of 1911 is a formal consent by the People of Porto Rico to be sued for the recovery of taxes paid under protest. Except for the specific recognition and ratification of such consent contained in section 10" (quoted above) "of the law of 1916, unquestionably the whole of the law of 1911 would have been repealed by the sweeping terms of Section 2 of the later enactment. Indeed, it would seem much more accurate, although somewhat paradoxical, to say that the only logical effect of the two sections construed together in the order

in which they occur in the text is to operate a simultaneous repeal and re-enactment or continuation of the law of 1911, subject, however, to the restrictions, limitations, and modifications indicated in the context.

"Certainly it cannot be contended that the legislature in 1916 did not have in mind the law of 1911, and to say that suits previously authorized in form against the Treasurer or any other officer of the Government, in his representative capacity, were not intended to be included in the provisions of Section 13, would be simply to annex thereto, by judicial legislation, a proviso that the legislature in its wisdom did not see fit to add."

Sauri and Subira v. Sepulveda, *supra*, 25 P. R. R. 224, 232-233.

In that state of the law, and in view of those decisions of the Supreme Court of Porto Rico, it is very clear that after the enactment of Act No. 76 of April 13, 1916, in view of the express proviso of Section 10 of that Act, as above quoted,

"that all such actions shall be brought only in the Insular district courts,"

and so long as there was no further expression of the legislative will of the Legislature of Porto Rico, no suit for the recovery of protested taxes could be maintained in the Federal court.

And in view of the law as it then stood under those statutes, this court necessarily held March 15, 1921, that in a suit begun August 27, 1919, while those statutes were in effect,

"The remedy for the recovery of taxes, paid under protest, under Section 3 of the Act of March 9, 1911, is not an adequate remedy for a party having otherwise a right to resort to the Federal court."

Camunas v. Porto Rico Ry. Lt. & P. Co., *supra*, 272 Fed. 924, 927 (Anderson, J.); the case now relied upon by appellants.

It is manifest that that decision was right and would now be controlling if the statutory law of Porto Rico were still the same that it was when that suit was begun on August 27, 1919 (or that it was at the date of that decision, March 15, 1921, since the Act of March 13, 1920 (Act No. 17), did not change the legislative policy of Porto Rico in this respect).



The next pertinent statute (omitting Act No. 80 of 1919, which related (Secs. 57-63 and 66) only to the recovery of protested *income tax* payments; see *infra*, Appendix, pp. 68-69), is Act No. 17 of May 13, 1920 (Appendix, *infra*, pp. 61-63), which took effect ninety days after its approval. That Act expressly repealed the law of March 9, 1911, and provided that any taxpayer paying taxes under protest might within fifteen days thereafter begin suit against the Treasurer of Porto Rico "*in the proper district court pursuant to the Code of Civil Procedure*" (Section 2), that "the district court" (Section 4) should designate on each calendar such days as it might deem necessary to pass upon suits for protested taxes, that the suit should be defended by the Attorney General or someone designated by him from his department, and that in case of decision adverse to the taxpayer the costs should be taxed against him (Section 4),

"together with a reasonable amount to be fixed in the decision *by way of indemnity to The People of Porto Rico* for such work as may have been done in the suit *by the attorney for the said People of Porto Rico*, as if he had been a private lawyer, and the said costs and indemnity shall be covered into the public treasury";

but either party might appeal "from the decision of the district court to the Supreme Court" (Section 5) within fifteen days and that in the decision of the Supreme Court (Section 5)

"the same declaration will be made as regards costs and indemnity as provided in Section 4 of this Act" (that is, if adverse to the taxpayer, a judgment for indemnity direct to the *People of Porto Rico*);

and that (Section 6) any time "The People of Porto Rico" should show through a certificate issued by the Treasurer that the taxpayer complainant had not paid any other tax subsequently due, within the time fixed by law, he should be deemed to have withdrawn his suit with costs and with the indemnity fixed in Section 4 of the Act to be taxed against him. Furthermore (Section 7)

"That from and after a tax paid under protest is received, *the same shall be considered as all other revenue from taxes*, the amount thereof to be applied to the obligations of the

Treasury of Porto Rico, and the part of the protested tax appertaining to the respective municipalities pursuant to law shall be turned over to them";

and (Section 9)

*"That all amounts paid to this date by way of taxes, excise or fees under protest shall be transferred from the special trust fund into which the same have been covered, to general funds of the Insular Treasury."*

And also (Section 8)

*"That when a decision in a suit for taxes paid under protest shall become final, if adverse to the People of Porto Rico, the Treasurer shall, upon receipt of the proper certificate from the District Court, include in such estimate as he may present to the Governor, in accordance with the Organic Act, the necessary amount to reimburse the tax payer such sum as shall have been fixed by the court for the illegal tax and costs."*

And the part of the said tax which should be reimbursed by the municipality or municipalities among which it was distributed, shall be deducted by the Treasurer out of taxes to be turned over to such municipality of municipalities in the following year, by halves, one-half in the first semester and one-half in the second semester of the following fiscal year."

It is too plain for argument that this Act of 1920 simply continued the legislative policy theretofore enunciated by the acts of 1911 and 1916, viz., that a suit for the recovery of protested taxes under that Act was a suit directly against the People of Porto Rico to recover from the Insular Treasury money that had already been paid into that Treasury and distributed between the Insular Government and the different municipalities, and that the suit could be brought only in the Insular courts—"in the proper district court" (Section 2, *supra*), with a right of appeal "to the Supreme Court" (Section 5, *supra*); and not in the Federal court. For this reason, as well as because of the requirement of Section 2 of that Act of 1920, that the complainant in a suit to recover protested taxes attach to his complaint not only the protested tax receipt but also a certificate from the office of the Treasurer, setting forth that he has paid *all his taxes*, and the provision of Section 6 thereof, above quoted, that at any time

"that the People of Porto Rico shall show, through a certificate issued by the Treasurer, that a taxpayer complainant has not paid *any other tax* subsequently thereto, within the time fixed by law, he shall be deemed to have withdrawn his suit with costs."

this court necessarily held, in *West India Oil Co. v. Gallardo*, 6 Fed. (2d), 523, 524, June 12, 1925, and in *Porto Rico Mercantile Co. v. Gallardo*, 6 Fed. (2), 526, 528, July 7, 1925, that the remedy provided under that Act of 1920 "is not a plain and adequate remedy at law."

*It necessarily follows, that, as above observed, if the statutory law of Porto Rico on this subject, and the legislative policy of that Island thereby established, had remained unchanged* from the date of the enactment of the Act of 1920 up to the date of the beginning of these suits, then it would have to be conceded that the appellants did not have a plain, complete or adequate remedy at law for the alleged wrongs of which they complain, and that the appellants would have had a right, as they now claim in Point I (p. 3) of their petition for rehearing that they had, to rely upon the decision of this court in the *Camunas* case in 1921 (*Camunas v. Porto Rico Ry. Lt. & P. Co.*, *supra*, 272 Fed. 924), and that that decision, as well as those in *West India Oil Co. v. Gallardo*, and *Porto Rico Mercantile Co. v. Gallardo*, *supra*, would be applicable and controlling.

**But the statutes of Porto Rico on this subject and the legislative policy thereby announced did not remain the same.**

By Act No. 9 of June 23, 1924, quoted at length in the opinion of this court, September 25, 1926, in these causes (Opinion, pp. 4-6), afterwards amended and elaborated by Act. No. 84 approved August 20, 1925, the Porto Rican Legislature not only expressly repealed the prior act of May 13, 1920, and substituted other provisions in lieu of it, but also, in so doing, completely changed the legislative policy of the Island in respect to suits for the recovery of protested taxes, and the basic nature of the remedy itself.

*Prior to 1924, all of the legislation on the subject, as above reviewed, (except only that relating to income taxes,—Act No. 80 of 1919, Appendix, infra, pp. 68-69, not affecting taxes such as these here in question), had evinced a policy of narrowly and jealously limiting the right of the taxpayer to sue for the reimbursement of taxes paid under protest. That legislation had consistently embodied the following principles, crystallized in the Act of May 17, 1920, viz.:*

*a. That money collected for protested taxes should be paid directly into the Insular Treasury, and be treated as other moneys belonging to the Insular Government; so that*

*b. Any suit to recover them (although it might be, in form, against the Treasurer) was necessarily in reality a suit directly against the People of Porto Rico; and*

*c. In case of a judgment in favor of the protesting taxpayer, the proceeds of the judgment had to be provided for out of the general tax levy (either by express appropriation, as provided by Section 8 of the Act of 1916; or by being deducted from the taxes collected for the next following year, as provided in the second paragraph of Section 8 of the Act of 1920); and*

*d. That, such a suit being a direct suit against the People of Porto Rico, that sovereignty consented to be thus sued only in its own courts (and not even in all those courts, but only, expressly, "in the proper district court"; Section 2, Act of 1920); and that, even there, the right of the taxpayer to sue was closely and jealously limited by the provisions (1) that he must file a bond to cover not only ordinary costs but also, in case of a decision against him, attorney's fees for the attorney of "The People of Porto Rico," not only for such attorney's work in the trial court (Section 4, Act of 1920), but also on appeal in the Supreme Court of Porto Rico (*ibid.*, Section 5); and (2) must also file with his suit a certificate not only that he had paid the protested tax, but that he had also paid *all other taxes* (Section 2, Act of 1920), and must keep that condition good, subject to the danger of forfeiting his right to proceed with the suit in case he failed to pay any other subsequently accruing taxes (Section 6, Act of 1920).*

*The Act of 1924 revolutionized all that. It evinced an exactly opposite legislative policy.*

It reveals the intention—elaborated and made even clearer by the Act of August 20, 1925, allowing interest at six per cent, as well as costs, to the taxpayer upon recovery of protested taxes—of providing a liberal remedy. It not only expressly repeals "all laws or parts of laws in conflict herewith," as well as said Act No. 17 of May 13, 1920 (Section 8, Act No. 9 of June 23, 1924, *supra*), but, as the latest expression of the legislative will on the subject, it necessarily repeals, or modifies, the general Act of 1916 (Act No. 76 of April 13, 1916, *supra*) concerning suits against the People of Porto Rico, in so far as any of the provisions of that Act may be in conflict with this later Act of 1924.

In contradiction to the Act of 1920 and the earlier Acts, the Acts of 1924 and 1925 expressly provide:

a. That moneys collected as protested taxes shall *not* be mingled with the general funds of the Porto Rican government in the Insular Treasury; but shall, on the contrary, be set aside and "covered into a special fund to be known as 'Taxes paid under protest—Trust Fund'" (Section 3, Act of 1924; *ibid*, as amended by Section 1, Act of 1925),

"to be there held until the final decision of a court of justice is rendered upon the legality of the collection of the taxes so protested, and likewise interest at the rate of six (6) per cent on the protested part shall be covered monthly into the said Trust Fund, taking the sum necessary therefor out of such moneys as may be available in the Treasury of Porto Rico, for which purpose the Treasurer of Porto Rico is hereby authorized and empowered to dispose of such moneys in the Treasury of Porto Rico";

so that the suit is no longer one "to transfer money from the Insular Treasury into the pockets of plaintiff", but is, in fact, as well as in form, simply a suit against the Treasurer personally, to be satisfied, in case of judgment for the complainant taxpayer, out of the moneys held in the defendant's hands in a trust fund especially for that purpose (instead of having to be paid, as under the earlier legislation, out of the general funds accruing from the general Government taxes).

That such a suit, which will not result in any claim against the general funds of the Insular Government, is not a suit against

the Government, but on the contrary, a personal suit against the individual defendant Treasurer, is well settled.

It has been so ruled by the Supreme Court of Porto Rico in the *Serralles* case, *supra*; a case which appellee submits, being a construction of an analogous Porto Rican statute by the highest Insular tribunal, is controlling as to the Insular courts' construction of these Acts of 1924 and 1925, and will, therefore, for the purposes of the inquiry now before us,—viz., whether they authorize suits in the Federal courts as well as in the Insular courts,—be accepted and followed by this court.

In the *Serralles* case, the Porto Rico Supreme Court expressly holds that an action for the refund of income taxes, brought against the Treasurer of Porto Rico under Sections 55 to 63, and 66, of Porto Rican Act No. 80 of June 26, 1919, analogous to said Acts of 1924 and 1925; *although not providing, as those Acts do, for holding the protested tax moneys in a "trust fund,"*—is (a) *not* controlled by the general act of 1916, *supra*; and (b) *not* a suit against the People of Porto Rico.

*Serralles v. Treasurer of Porto Rico*, 30 P. R. R. 220, 222-223 (Appendix, *infra*, pp. 77, 78-80.)

*As above stated, appellee submits that the Serralles case is applicable, and controlling, as to the interpretation to be placed upon the Acts of 1924 and 1925.*

*See also*, that suits against the Treasurer under those Acts, to recover protested tax moneys *held by him in the trust fund there provided*, and not in the Insular treasury (so that "the financial status of the treasury" is not involved), are not suits against the People of Porto Rico,

*Osborn v. Bank*, 9 Wheat. (22 U. S.), 738, 857.

*Jumel v. Louisiana*, 107 U. S. 711, 724, 271.

*Lankford v. Platte Iron Works*, 235 U. S. 461, 470 (McKenna, J.).

*Camunas v. N. Y. & P. R. S. S. Co.*, 260 Fed. 40, 48 (Anderson, J.).

b. That the complainant taxpayer may

"sue the Treasurer of Porto Rico in a court of competent jurisdiction, to secure the return of the amount protested" (Section 4, Act of 1924; *ibid*, Act of 1925),

and that (Section 5, Act of 1924) "*Either party may appeal to a higher court*"; that (Section 7) the sum of \$15,000 or such part thereof as may be necessary "is hereby appropriated" out of any funds in the Insular Treasury not otherwise appropriated, for the payment by the Treasurer of such costs "as by judgment of any competent court" may be allowed to any taxpayer who shall have brought suit under that act.

It will be observed how carefully, all through this Act, the Legislature avoided the use of any terms specifically indicating the Insular courts; in sharp contrast with the express provisions of prior legislation that the suit should be "in the proper district court," with appeal to the "Supreme Court" (Act of 1920), and expressly, "in the Insular courts" (Act of 1916) as above quoted.

*It must be presumed that the Legislature*, in thus changing this phraseology, and carefully avoiding the use of the terms which it had used in the earlier acts specifically referring to the Insular Courts, *did so with deliberate purpose to change the policy of the statute*, and to avoid limiting to the Insular Courts a taxpayer who might otherwise have the right to sue in the Federal Court.

c. Instead of the payment of a judgment recovered by the taxpayer being made subject to subsequent appropriation by the Legislature from general funds for its payment (Section 8 of the Act of 1916), or being required to await refunding by the Treasurer out of general taxes collected in the following year (second paragraph of Section 8 of the Act of 1920), this Act of 1924 provides (third paragraph of Section 4, Act of 1924, and second paragraph, *ibid*, Act of 1925):

"When final decision is rendered, if favorable to the taxpayer, the Treasurer of Porto Rico shall proceed to return to him the amount directed in the decision, to be charged against the fund 'Taxes paid under protest—Trust Fund,' referred to in Section 3 hereof,"—

and, under the Act of 1925,—

"plus interest on such amount at the rate of six (6) per cent, a year, to be computed from the date on which payment under protest was made to the date on which actual return is made by the Treasurer to the taxpayer of the amount directed by the court to be returned."



d. Instead of the prior jealous limitations upon the taxpayer's right to sue (the requirements of the prior Acts hereinbefore noted that he should file with his complaint a certificate not only of the payment of the protested taxes but that he had paid *all other taxes*, and that he should also keep that condition good pending the suit by paying all other taxes, subject to forfeiture of his right to proceed further with the suit for the protested taxes, and that he should also be required in case the suit went against him to pay not only costs but also attorneys' fees for "The People of Porto Rico" both in the District Court and in the Supreme Court on appeal), the Act of 1924 provides only that the taxpayer, on filing suit against the Treasurer, shall attach the receipt for the taxes paid under protest, or a certified copy of it (Section 6). No bond whatever is required on filing the suit, and there is no provision for his being assessed for attorneys' fees in case the suit should go against him.

The provisions in the Act of 1924 to which reference is made on pages 6 and 7 of appellants' petition for rehearing concerning the time within which the taxpayer must begin his suit and the time within which he must appeal, and referring to the procedure on the suit and the appeal, are not inconsistent with the right to sue in the Federal Court, and do not confine the suit to the Insular Courts.

a. The provision (Sections 4 and 5, Act of 1924, *infra*, Appendix, p. 64, 65), limiting the time within which the taxpayer must begin the suit or take an appeal, are equally applicable whether the suit be in the Insular Court or in a Federal Court. In either case the limitation does not act on the court, but only limits the length of time for which the Treasurer must hold the protested tax money in the trust fund awaiting the action of the taxpayer. If the suit is not begun, or the appeal taken, within the time limited, the Treasurer will cover the money into the Insular Treasury, and there will no longer be any trust fund available to meet the judgment of the court. The situation is exactly analogous to an ordinary escrow between private persons directing the escrow holder to hold the deposited moneys for a certain length of time and then to pay them over in a designated way if no suit has been begun to determine their proper disposition. No one would suggest that the parties to such an escrow agree-



ment had any power, or were in any way attempting, to control the procedure of the court. The situation is the same here.

b. The procedural provisions (e. g., second paragraph of Section 4, that the court before which the action is pending shall fix the day for the trial without the necessity of a request from the parties, and the second paragraph of Section 5, that the "court of appeals" shall hold the hearing with preference over any other matter pending before it) are manifestly intended simply to regulate the procedure if it shall happen to be in an Insular Court; and, in case it shall happen to be pending in a Federal Court, then the only effect of these clauses is that, in accordance with the usual rule as to actions at law in Federal Courts, the Federal Court will, in so far as it can, consistently with Federal statutes and its own organization and general principles of procedure, follow the law of the State in which it sits. No reason appears why in a case where, if the court were sitting within one of the States of the Union, the law of the State would control the procedure in a common law action, the same principle should not be applied, by analogy, to the procedure of the Federal District Court of Porto Rico, especially when the procedure, such as the expediting of the action contemplated by these sections of the Act in question, is for the benefit of the individual litigant (the taxpayer here) who must be interested in prosecuting the case to a finish and not allowing it to linger in the court, and hampering the collection of the taxes of the government in which he, as one of the citizens and taxpayers, is interested like all other citizens.

Certainly there is nothing in these procedural directions overruling the general legislative intention that the suit may be in any "court of competent jurisdiction" (Section 4, Act of 1924; *ibid.*, Act of 1925), including the Federal Court.

It may be worth noting that in the second paragraph of Section 5 of the Act of 1924 dealing with appeals, the legislature carefully uses the phrase "the court of appeals," instead of the specific term "the Supreme Court" which it had used in Section 5 of the Act of 1920. There is no Insular court denominated "the Court of Appeals"; so that it is very plain that the legislature in changing the phrase from "the Supreme Court," which specifically named the Insular Court, to the phrase "the court of appeals," which was not the title of any Insular Court, intended to make the Act broad enough to cover any court, whether Insular or Federal, to which the appeal might be taken.

It is well settled that, in a suit against an individual official, wherever a right of action exists in the State courts, the same right of action exists in the Federal courts in favor of one otherwise entitled to sue in the Federal Court. No consent by the State is necessary to the existence of such Federal right of action.

*Confer, Smyth v. Ames, 169 U.S. 466, 516.*

The administrative authorities in Porto Rico, including the Treasurer, appellee here, have administratively considered the Acts of 1924 and 1925 as, without question, authorizing the filing of suits in the Federal Court when there is diversity of citizenship or other grounds of Federal jurisdiction, and the Federal District Court of Porto Rico has, under those Acts of 1924 and 1925, taken jurisdiction, without objection from the Treasurer of Porto Rico, in several cases of suits brought for the recovery of taxes paid under protest. One such case is that of *West India Oil Company v. Gallardo*, now pending in this court on appeal (with names reversed), No. 2047, October term, 1926, of this court. There are several other cases now pending before the Federal District Court of Porto Rico for recovery of taxes paid under protest, in none of which has any objection been made, either by the Treasurer, or by the court itself, to the jurisdiction of that court.

*In view of this radical change in the law since the decision of the Camunas case (Camunas v. P. R. Ry. Lt. & P. Co., 272 Fed. 924, supra) appellants had no right to rely, as they say they did (Petition for Rehearing, p. 3), on the decision of this Court in that case, in 1921, in bringing these suits.*

Even if it should be held that under the Acts of 1924 and 1925 the remedy of the protesting taxpayer is limited to suit in the Insular Courts and that, therefore, that remedy does not provide, technically, "a plain, adequate and complete remedy at law" within the meaning of Section 267 of the Judicial Code, so that there is jurisdiction of the suit in equity, it by no means necessarily follows that, because equity has jurisdiction, it will interfere by injunction with the collection of taxes due to the government of Porto Rico. It is too well settled to require citation of authorities that:

a. The question of the existence, or not, of a "plain, adequate, and complete remedy at law," either under Section 267 of the Judicial Code or under the general principles of equity jurisdiction, *goes only to the jurisdiction in equity.*

b. Even though equity may have jurisdiction, it does not necessarily follow that injunction will issue.

c. The issuance or not of the writ of injunction is always within the sound of judicial discretion of the court.

d. The writ of injunction will not ordinarily issue to enjoin the collection of taxes upon which the existence and proper functioning of a government depends;

*except* in a very plain case, and under exceptional circumstances.

Petitioners do not here show circumstances sufficient to take this case out of the general rule.

There is, therefore, nothing in the opinion of this court of September 25, 1926, in these causes, in any way at variance with the decision of the Supreme Court in *Risty v. C. R. I. & P. Ry. Co.*, 270 U. S. 378, as claimed (p. 3) in the petition for rehearing; because (a) the remedy of the taxpayer for the recovery of protested taxes under the Acts of 1924 and 1925 is not limited to the Insular Courts, and (b) even if it were so limited it does not necessarily follow that injunction would issue. In the *Risty* case the court does not even hold that the mere fact that the taxpayer's statutory remedy is limited to the State courts would, in itself alone, give jurisdiction in equity. The Supreme Court in that case adds, significantly:

*"The legal remedy under the State law being uncertain, the Federal court has jurisdiction in equity to enjoin the assessment"* (*Risty v. C. R. I. & P. Ry. Co.*, *supra*, 270 U. S. at p. 389).

### III

The decision of this Court, September 25, 1926, in these causes is not in any way at variance with the decisions of the Supreme Court, or with the former decisions of this court, cited under Point III, pp. 3 to 4, of Appellants' Petition for Rehearing.

Those cases cited by appellants are:

Hill v. Wallace, 259 U. S. 44, 62.  
Union Pacific R. R. Co. v. Weld County, 247 U. S. 282.  
Ohio Tax Cases, 232 U. S. 576, 587.  
Benedicto v. West India & Panama Telegraph Co., 256  
Fed. 417, 421.  
Benedicto v. Porto Rican & American Tobacco Co., 256  
Fed. 422, 425.

Examination of the opinions of the courts in those cases will show that none of them is at variance with the fundamental rule that, as it has been stated by this court heretofore,

"it requires no discussion or citation of authorities to show that only a very plain case would warrant a court of equity in issuing an injunction tending to cripple a government in the collection of taxes necessary for its existence and performance of its essential public duties"

Camunas v. N. Y. & P. R. S. S. Co., 250 Fed. 40, 50 (Anderson, J.), June 3, 1919;

which is the same rule followed and applied by this court in its opinion (pp. 6-8) of September 25, 1926, in these causes. All of the cases relied upon by appellants are cases of wholly exceptional circumstances, following the principles enunciated in the leading case of *Ex parte Young*, 209 U. S. 123, where the court said (at p. 146):

"But when the legislature, in an effort to prevent any inquiry of the validity of a particular statute, so burdens any challenge thereof in the courts that the party affected is necessarily constrained to submit rather than take the chances of the penalties imposed, then it becomes a serious question whether the party is not deprived of the equal protection of the laws" (quoting from Mr. Justice Brewer's opinion in the earlier case of *Cotting v. Kansas City Stock Yards Co.*, 183 U. S. 79, 100).

An examination of appellants' cases will show that in each of them there were unusual circumstances taking the case out of the general rule. There are no such circumstances in this case. The statutes here in question announce no unusual penalties, and evince no attempt on the part of the legislature to burden in any way any challenge thereof in the courts. The provisions for the collection of these taxes are simply those provided for the collection

of taxes generally. It is provided (Section 62, Act of 1925) that the sales tax shall be payable only once a month, and that (Sections 79, 80, 81, and 102, Act of 1925) any one failing to comply with the requirements of the Act shall be guilty of a "misdemeanor," and that (Sections 78 and 103, Act of 1925) any one guilty of such misdemeanor may be punished by "administrative fine" by the Treasurer of not more than \$25.00, (Section 75, Act of 1925), or by fine of not less than \$100 nor more than \$1,000 or to confinement in jail for a term of not less than thirty days or more than one year, or for the second and each subsequent offense both penalties, fine, and imprisonment. For failure to pay the tax on the monthly sales no further penalty is attached, except the addition of 10 per cent of the amount due (Section 77, Act of 1925), and the Treasurer is directed to collect this tax in the same manner as other taxes are collected (Section 105, Act of 1925). There are here none of the unusual features which have moved the courts to interfere with the collection of taxes by the strong arm of injunction. There is, for instance, no provision making failure to pay on each individual sale an individual offense, or multiplying the penalties, and no provision for closing the place of business or forfeiting the property involved because of failure to pay the tax; or making the tax a lien on real estate so as to cloud the title; nothing whatever to impede any taxpayer from having his remedy by paying the taxes under protest and suing to recover, in the meanwhile carrying on his ordinary business undisturbed. That is, in fact, just what these complainants are doing at present. They are paying the tax to the Clerk of the District Court under the orders heretofore entered in these causes, and are carrying on their businesses while this litigation is in progress. They would be in no different position if they were paying to the Treasurer every thirty days, and putting their suits of record at law to recover the protested taxes. That would not involve any such "multiplicity of suits" as to be a burden. It cannot be presumed that it would require more than a few months, perhaps a year, for the matter to be determined on such a suit at law; so that, at most, any individual taxpayer would only be required to file perhaps ten or twelve consecutive suits at law, to lie in the Clerk's office undisturbed pending the determination of his first suit. That, practically, cannot be said to be any such hardship

as to make it necessary to interfere by injunction with the collection of the Insular taxes.

Especially does this appear to be true when one remembers the general principle that, as this court has heretofore said, *arguendo*,

"it is manifestly undesirable that a Porto Rican statute should receive its first judicial construction in the Federal court";

although, as the court said in that case, the Federal court may not on that ground alone refuse relief to the plaintiff, *if he is otherwise clearly entitled thereto*.

*Camunas v. N. Y. & P. R. S. S. Co.*, *supra*, 260 Fed. 40, 48.

Appellants contend (Point IV, pp. 2, 12-14, Petition for Re-hearing) that this court "has overlooked" (alleged) "essential differences between these causes and *Boise Artesian Water Co. v. Boise City*, 213 U. S. 276, and *Dodge v. Osborn*, 240 U. S. 118, and *Long v. Norman*, 289 Fed. 5, and has erroneously applied the principles of those decisions."

It is believed that what has already been said in this brief in the foregoing points disposes of this contention. There is here no irreparable injury threatened to these appellants, no penalties denounced by the statutes or action threatened by the defendant which will seriously burden appellants in case they seek by an action at law to challenge their liability for these taxes, and no "multiplicity of suits" of a burdensome nature, at all commensurate with the injury that would be done to the People of Porto Rico by tying up a substantial part of the tax income of the Island by injunctions in these causes. As before observed (*supra*, p. 24), in case the decrees of the court below dismissing these suits be affirmed, and appellants pay the taxes under protest and sue for their return with 6 per cent interest, under the Act of 1924, as amended by the Act of August 20, 1925, they will be, for all practical purposes, in precisely the same situation in which they are now. The only difference at all will be that, instead of having paid the tax money into the hands of the Clerk of the Federal District Court to be held by him pending the litigation, they will have similarly paid it into the trust fund in the hands of the Treasurer of Porto Rico, with the additional advantage to them that it

will then be drawing 6 per cent interest for their benefit in case they shall ultimately be held entitled to its return.

At the risk of undue prolixity, we venture to call the court's attention to the fact that the taxes here are not "paying day by day and in many cases upon many transactions during one day" as stated on page 12 of Appellants' Petition for Rehearing. The statutes here in question provide, as hereinbefore pointed out (p. 23, *supra*), that the taxes shall be paid *monthly*. Therefore no payment is required "day by day." We venture to append a copy of the regulations of the Porto Rico Treasury Department, under these statutes; which are recognized as part of the public law of the Island by the last clause of Section 94 of the Act of 1925, and of which it is therefore believed this court may take judicial notice. We also invite the court's attention to the fact that it appears from the record of these causes that the *statement is only required* to be made by the taxpayer *once a month* at the end of the month, stating the articles sold during that month and the selling price; the tax is then computed by the Internal Revenue Division of the Treasury Department *and the tax thus computed is paid in one single payment*. This is the law, and this has been the practice of the Treasury Department of Porto Rico, and, in accordance with that practice, in the order of the District Court granting the supersedeas in these cases it was directed that these taxpayers, appellants, are required and ordered to pay *monthly* the amounts of taxes due according to the examinations made by the Treasury Department (Trans. of Rec. Case No. 1944, pp. 64, 65).

It thus appears that the statement of appellants (p. 12, Petition for Rehearing) that

"the multiplicity of suits would be so great and so expensive as almost to force at least many of the appellants to abandon their legal rights. If they do *not* abandon them, then this court instead of having forty of such cases upon its docket will have approximately *forty hundred*,"

*is absolutely unsound and baseless.*

Appellants contend (Petition for Rehearing, Point V, pp. 4, 14-15) that:



"the Act of June 23, 1924, referred to in the opinion, does not provide for interest."

Appellants, in this contention, entirely overlook the effect of the amendatory act of 1925 (Act No. 84 of August 20, 1925) providing for payment of interest at 6 per cent, to which they themselves refer. There is nothing whatever in that Act limiting its effect to taxes which accrued prior to its date. It is an amendment of the Act of 1924, and the provision as to payment of interest is inserted, by the amendment, at the end of Section 3 of the 1924 act. The portion of the section pertinent to the payment of interest reads:

"Section 3.—The moment that a tax paid under protest is received, • • • The protested part shall be covered into a special fund to be known as 'Taxes Paid Under Protest—Trust Fund,' to be there held until the final decision of the court of justice is rendered upon the legality of the collection of the taxes so protested, and likewise interest at the rate of six (6) per cent of the protested part shall be covered monthly into the said trust fund, taking the sum necessary therefor out of such moneys as may be available in the Treasury of Porto Rico, for which purpose the Treasurer of Porto Rico is hereby authorized and empowered to dispose of such moneys in the Treasury of Porto Rico."

Manifestly, upon the dismissal of these causes by the District Court as heretofore ordered by this court in its judgment of September 25, 1926, the tax money involved in all of these cases,—regardless of the date when the taxes originally accrued or when these injunction suits were started,—will then be paid, for the first time, to the Treasurer. That will be the date, and the only date, of payment to him. And in case that payment be made under protest, then, by the express terms of this Act of 1925, as above quoted, the interest at 6 per cent will begin to run from that "moment."

*There is nothing whatever in this claim of appellants.*

## VI

Appellants suggest (Petition for Rehearing, Point VI, pp. 4, 15-17) that:

"The judgments which this court has entered are such that the appellants cannot effectively pursue their alleged remedy



at law, and there is grave danger that they will be forced to suffer a huge money loss merely because they relied upon this court's decision in the *Camunas case*, cited *supra*."

As we have said appellants "suggest" this. It cannot be that they mean to say to this Court that they really are seriously afraid that (Petition for Rehearing, pp. 16-17)

"the collector to whom the money is paid will take the position that the appellants have not brought themselves within the literal terms of the statute and refuse to give the required receipt with the necessary indorsements showing the protest. Or, it may be contended that payment was made when the money was deposited, and an action to recover it may fail because not brought within thirty days. There is danger, too, that the Insular courts may sustain one or the other of these positions. We do not say that such position would be sound. We *do* say it might be taken and sustained."

*It surely is not necessary for us to say to this Court that the Insular authorities do not desire to trick appellants out of their money; and would not be in position to do so even if they wished. We submit that there is no possible way in which the order of the court below (R. 64, 65, Case No. 1944), directing these appellants to deposit the moneys with the Clerk of the Court, could be twisted into a payment to the Treasurer. It is not so on its face, and therefore is not so at law. It was not so intended, and therefore could not be so treated in equity. And this court will not presume that the Insular Courts will take position so wholly at variance with right and justice and with the intention of the parties, and so wholly unjust to their own citizens and taxpayers. Moreover, this Court and the Federal District Court are in position specifically to protect appellants in this regard. It is only necessary to so frame the order directing the moneys to be paid out by the Clerk of the District Court as to assure that they shall only be so paid in the name of the appellants, under protest; and only upon receiving against them receipts in proper form, in accordance with the Acts of 1924 and 1925, to become the basis of suits for the return of the protested taxes and interest, and specifically showing that the payment is made to the Treasurer on, and receipted for him by him as of, the date on which the money is actually turned over to him.*

## APPENDIX V.

DEBATE IN THE UNITED STATES SENATE, FEBRUARY 28, 1927,  
UPON THE THEN PROPOSED AMENDMENT OF SECTION 48 OF THE  
ORGANIC ACT OF PORTO RICO, NOW ENACTED AS SEC. 7 OF THE  
ACT OF MARCH 4, 1927 (44 STAT., CH. 503, PP. 1418, 1421).

68 CONG. REC., 5025-5026.

"MR. BINGHAM. Mr. President, at the request of the Delegate from Porto Rico I desire to add another amendment on page 11, after line 20, as a new section. I send it to the desk and ask to have it read.

THE PRESIDENT PRO TEMPORE. The amendment will be stated.

MR. BINGHAM. I will say for the information of the Senate that the first paragraph of the new section is now in the law; and the second paragraph merely makes the general statutes of the United States apply to Porto Rico, so far as securing injunctions against the payment of taxes is concerned. In other words, the general statutes now do not apply to Porto Rico in this regard, but apply only to the United States.

THE PRESIDENT PRO TEMPORE. The amendment will be stated.

THE CHIEF CLERK. After line 20, on page 11, it is proposed to add a new section, as follows:

Sec. —. That section 48 of said act be, and the same is hereby, amended to read as follows:

"Sec. 48. That the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases.

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the district court of the United States for Porto Rico."

MR. WADSWORTH. Mr. President, that would seem like a rather important amendment, especially the last sentence.

MR. MCKELLAR. May it be read again?

**THE PRESIDENT PRO TEMPORE.** The amendment will be restated.

**THE CHIEF CLERK.** It is proposed to add, after line 20, page 11, the following:

That section 48 of the said act be, and the same is hereby, amended to read as follows:

"Sec. 48. That the supreme court and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district courts of the United States, and the district courts may grant writs of mandamus in all proper cases—

**MR. BINGHAM.** That is now the law. There is no change in that.

**THE CHIEF CLERK** (continuing):

"That no suit for the purpose of restraining the assessment or collection of any tax imposed by the laws of Porto Rico shall be maintained in the district court of the United States for Porto Rico."

**MR. ROBINSON OF ARKANSAS.** Mr. President, what is the change in the existing law?

**MR. BINGHAM.** In answer to the question of the Senator from Arkansas, I will state the change in the existing law is this: The organic act of Porto Rico did not carry to Porto Rico the general statutes of the United States.

Consequently, it has been possible and has proved an extremely dangerous thing in the government of Porto Rico for taxpayers to secure an injunction against paying Porto Rican taxes in the court of the United States, in the district court of the United States for Porto Rico; and thereby, instead of following our practice—which is to pay the tax first and then take an appeal—they do not pay the tax at all. They get injunctions against paying the tax; and I have seen in one of the publications the statement that at one time there was over \$2,000,000 of uncollected taxes held up by injunction. This amendment is to apply the same rule in Porto Rico that now applies on the continent of the United States.

**MR. WADSWORTH.** May I ask the Senator from Connecticut, is this amendment perhaps the result of a decision or a series of decisions of the circuit court of appeals sitting at Boston?

MR. BINGHAM. No; it is caused by the fact that the district court of Porto Rico has repeatedly granted injunctions against the payment of taxes.

MR. WADSWORTH. On the ground that they were illegally assessed?

MR. BINGHAM. For one reason or another. The treasurer of Porto Rico has been unable to collect the taxes levied, as can be done in any other part of the United States. There the treasurer can collect, and then if there is any difficulty about it the matter is brought before a court; but under the present law, since the general statutes of the United States do not apply to Porto Rico, the taxpayer can get an injunction; and the taxes the collection of which was restrained by those injunctions amounted, at one time, to more than \$2,000,000.

MR. WADSWORTH. Assuming that this amendment becomes law, what recourse has the taxpayer?

MR. BINGHAM. The courts; the same that he has on the continent of the United States.

MR. WADSWORTH. Which courts?

MR. BINGHAM. The Porto Rican courts and the Federal court.

MR. WADSWORTH. No; not the Federal court. That is the point. The Federal court is taken out of it.

MR. BINGHAM. This is not a Federal tax. This is in regard to Porto Rican taxes.

MR. SHORTRIDGE. Mr. President, if the Senator will yield, does the amendment deny to the courts their jurisdiction to grant an injunction as against illegal taxes?

MR. BINGHAM. It will make the condition just the same as in the United States.

MR. SHORTRIDGE. It, then, does give the court the jurisdiction to enjoin?

MR. NORRIS. There is another provision, however. There is ample provision made, as I understand the law, for the return of taxes that are illegally paid.

MR. BINGHAM. Oh yes; there is no question about that.

MR. NORRIS. But they can not get it by way of injunction.

MR. SHORTRIDGE. In other words, they must pay under protest and then bring appropriate proceedings to recover?

MR. BINGHAM. Yes; as in many of our States.

THE PRESIDENT PRO TEMPORE. The question is on agreeing to the amendment offered by the Senator from Connecticut.

The amendment was agreed to.

Cong. Record, Vol. 68, Part 5, pp. 5025-5026, Senate, February 28, 1927.

## APPENDIX VI.

STATEMENTS OF GOVERNOR TOWNER OF PORTO RICO, OF MAJOR GENERAL FRANK MCINTYRE, CHIEF OF THE BUREAU OF INSULAR AFFAIRS, AND OF HON. FELIX CORDOVA DAVILA, DELEGATE FROM PORTO RICO TO THE HOUSE OF REPRESENTATIVES, BEFORE THE HOUSE COMMITTEE ON INSULAR AFFAIRS IN THE HEARINGS ON H. R. 4085 AND H. R. 11846, MAY 4, 5 AND 11, 1926, PP. 5, 6, 8-9, 10-11, 63-65.

GOVERNOR TOWNER. "The next section that is amended is the provision on page 8, section 6. This provision extends to Porto Rico the provisions that exist in the United States law in regard to the granting of interlocutory or preliminary injunction suspending, or restraining the enforcement, or execution, of various laws, especially tax laws. The provision in the United States statute upon this subject is that no United States judge shall grant these injunctions unless he has called to his assistance two other United States judges, so that they may have the concurrent action of the three, or, the majority of the three, before an injunction which restrains an administrative act provided by law shall be granted. The general rule with regard to these laws passed by the United States is that all laws that are not inapplicable to Porto Rico shall be considered as applying to Porto Rico. This question arose in one of the courts as to whether or not this law should apply to Porto Rico, and the court decided that it could not be held that this law should apply to Porto Rico, or was intended to apply to Porto Rico, for the reason that there were not three United States judges in Porto Rico, and, therefore, it would be practically impossible to make the law workable. We have only one United States judge in Porto Rico, and, therefore, the law they held could not be said to have been intended to apply to Porto Rico. Now, in order to obviate this difficulty we have provided that United States judge shall not have the right to grant these injunctions restraining the collection of taxes or matters of that sort until he has called to his assistance in the same way that is provided in the States, two judges of the Supreme Court of Porto Rico. I should perhaps say that the judges of the Supreme Court of Porto Rico are all appointed for life by the President of the United States. Now, that would grant to Porto Rico, in effect,

the same right that is now granted in the United States. So that, they could not interfere with the execution of a law without they had first presented an application to a United States district judge, and we have one in Porto Rico, and he has called to his assistance two of the members of the Supreme Court, there being five members of the Supreme Court, and they, or a majority of them, should have concurred in that proposition. So far as I know, there is no objection I believe, to that provision. Are there any questions that any members of the committee desire to ask me concerning the measure?" (p. 5).

\* \* \* \* \*

"MR. SABATH. Speaking about the duties of the auditor and also of the right to grant injunctions, it is true that there are individuals and corporations, numbers of them, in Porto Rico, who are in arrears in their taxes?

"GOVERNOR TOWNER. Yes.

"MR. SABATH. What is that due to?

"GOVERNOR TOWNER. That has occurred in this way: A large number of the large taxpayers of the island went to the United States court, and obtained temporary injunctions stopping the payment of their taxes.

"MR. SABATH. Individuals and corporations, or principally corporations?

"GOVERNOR TOWNER. Principally corporations; and the worst of it was that it was impossible for the Government to bring them to trial. But now, conditions have changed, and the laws, the present laws, have been sustained by the courts in so far as they have been submitted, and most of that opposition has been withdrawn, and now we are collecting the taxes.

"MR. THURSTON. You are collecting the taxes now?

"GOVERNOR TOWNER. We have been collecting the taxes. Since the 1st of January we have had no difficulty in collecting the revenue, and we have been able to pay all the budgetary expenses, and have paid over \$500,000 of the current indebtedness that was incurred because of the failure to collect the taxes.

"MR. THURSTON. Then, the amount of taxes that they have refused to pay has reached the minimum, and your trouble is about eliminated?

"GOVERNOR TOWNER. Yes, sir; that trouble is about eliminated and we are now collecting the taxes rapidly and satisfactorily" (p. 6).

. . . . .

"MR. HARE. With reference to section 41, can the Federal judge who calls in to sit with him on an injunction proceedings two members of the supreme court, name those members himself, or, would it be up to the members to name the two members of the court who were to sit with him or, would he call on the chief justice to name the two members?

"GOVERNOR TOWNER. I think the language is exactly the same language that is used in the present United States Statute. Of course, that is a matter of arrangement that has to be taken up later, so as to get those judges who could act and who could sit, but I think the language of the act is exactly the same here as in the United States statute.

"MR. HARE. I understand that, but I just wanted to know what you thought would be the practice?

"GOVERNOR TOWNER. I think the practice is for the judge to make the selection himself.

"MR. HARE. For him to make it himself?

"GOVERNOR TOWNER. To make it himself, yes.

"MR. HARE. Don't you think it would be better to ask the chief justice to name the two members?

"GOVERNOR TOWNER. There certainly would be no objection to it, and perhaps it might be claimed that that would be too much of an extension or too much of a change. For instance, this is really an extension of the United States law to Porto Rico, and we are trying to make it just as nearly analogous to the United States law as it is possible to do. Now, as we did not have three district judges to act in cases of that kind, we are using the same process that is used in the United States, in so far as it is possible, but instead of taking two United States district judges of the United States as associates to sit in these cases we have to get them from the Supreme Court of Porto Rico.

"MR. HARE. The only question that has arisen in my mind is that he might attempt to select two members of the supreme court where it would be emergency, where they could not be



spared from their duties, or you would have to go to the chief justice to find out who would be available anyway.

"GOVERNOR TOWNER. I do not think there would be any difficulty in so arranging it.

"MR. THURSTON. Do the members of the supreme court act as trial judges in their different duties as supreme court judges?

"GOVERNOR TOWNER. No; it is strictly an appellate court. The members of the court are very eminent men, and it is a court of very high character, I may state (pp. 8-9).

\* \* \* \* \*

"MR. THURSTON. Just one question about your expenditures and income over there. Do you get enough revenue there to meet your expenditures readily?

"GOVERNOR TOWNER. Yes, we are now, but we had a great deal of difficulty until lately with regard to that matter.

"MR. THURSTON. What brought about the change?

"GOVERNOR TOWNER. Two things. In the first place we increased the revenue, and, in the next place, we got the court to decide the tax cases which had been pending, and which were decided favorably to the Government and now the money is coming in from them, so that we are now paying up our deficit, and we are now having a balanced budget. So far as our present position is concerned it is entirely satisfactory and our revenue is sufficient to meet our expenses.

"MR. THURSTON. Do you expect a continuance of that condition?

"GOVERNOR TOWNER. I think so. I do not know of any reason why it should not continue.

"MR. THURSTON. Was this deficiency caused by those parties holding back those taxes?

"GOVERNOR TOWNER. Yes.

"MR. THURSTON. You may have brought this out, I do not know. On what ground did they hold back those taxes?

"GOVERNOR TOWNER. They went into the United States Court and obtained injunctions merely upon the allegation, or practically upon the allegation that the law was illegal and unconstitutional. A temporary injunction was granted which, so far

as our purposes were concerned, almost amounted to a permanent one, because, notwithstanding our attempts and efforts to collect and bring those cases to trial we were not able to do so until within recent months. Under the new conditions the cases were decided in favor of the Government, so far as our present revenue laws are concerned.

"MR. THURSTON. What was the nature of those taxes involved?

"GOVERNOR TOWNER. Almost every tax imposed was contested in those cases. The income tax, especially the retroactive feature of the income tax, and the sales tax, and the excise tax that was imposed—the sugar tax, and, well, I think practically every tax was more or less involved.

"MR. WILLIAMS. You have a sales tax down there?

"GOVERNOR TOWNER. Yes.

"MR. WILLIAMS. How long have you had a sales tax in Porto Rico?

"GOVERNOR TOWNER. It went into operation this last year.

"MR. WILLIAMS. What do you think of the workings of it?

"GOVERNOR TOWNER. Well, so far it has been very satisfactory. I think we will have to modify the terms of our law somewhat, but it has certainly been a revenue producer, and, while it was violently opposed in the courts it has been sustained by them both in the United States courts and in the insular courts.

"MR. WILLIAMS. Did the people accept it agreeably?

"GOVERNOR TOWNER. Yes, the people accepted it, but the merchants objected to it particularly.

"MR. WILLIAMS. They had no complaint?

"GOVERNOR TOWNER. After a while they began to realize that it was possible to make the customers pay for it, and when they found that out their objection largely ceased (pp. 10-11).

\* \* \* \* \*

"GENERAL MCINTYRE. Section 6 is a section which affects principally the United States District Court of Porto Rico, and the feeling of the War Department was that we could not make a recommendation affecting that without taking it up with the Attorney General who would in turn take it up with the judge of the District Court of Porto Rico and, in view of that fact, a

report of this section at this session of Congress would be practically impossible and, therefore, the department recommended to me that that be omitted from this bill which it was hoped could be passed at this session of Congress. It was hoped that the bill could be passed or, at least, reported out in a satisfactory way at this session, and in order to avoid this delay, without criticizing this measure in any way, because the criticism would have to come from the district judge and the Attorney General, we thought we would just strike that out.

"THE CHAIRMAN. I should just like to add to your statement a paragraph in the Secretary's letter :

" 'In certain tax cases, now pending in the Circuit Court of Boston, the Attorney General of Porto Rico has pleaded that section 3224 of the Revised Statutes is now in effect in Porto Rico. Unless the proposed bill is passed at this session, this question will probably be decided before the next session of Congress.'

"GENERAL MCINTYRE. Yes; that refers to this first bill. I think it is taken out of the second bill.

"MR. DAVILA. Yes; because we came to an understanding.

"GENERAL MCINTYRE. You see in those tax matters, the Attorney General pleads that this section now applies in Porto Rico, and that is taken out of this section 41a.

"THE CHAIRMAN. The attitude of the War Department is that they can not—

"GENERAL MCINTYRE. We feel that it would be impossible for you to report this out with the necessary information at this session, if it contained this clause, because we feel that the Attorney General should pass on that, because it provides not only that two judges of the supreme court should be called in, but there is no way provided in this for calling them in. Now, when the district judge of Porto Rico could invite in two judges he should select, these judges of the supreme court being appointed by the President, we feel it would probably be required that the President or the Attorney General should designate in these cases two judges who should sit with the District Court of Porto Rico.

"MR. WILLIAMS. Your idea then is to strike out the section 6 of that section of this bill?

GENERAL MCINTYRE. Yes; we think it ought to be a separate bill, because we feel that it would necessarily delay any action you contemplate taking now.

"MR. WILLIAMS. That could be attended to at the next session of Congress by a separate bill.

"GENERAL MCINTYRE. That is what we thought (pp. 63-64).

\* \* \* \* \*

"MR. DAVILA. This amendment is a very important one for Porto Rico, and it is in accordance with the practice in the United States. Here in the United States when the constitutionality of a law is discussed it is necessary that three judges in the appellate court should decide whether or not a preliminary injunction will be issued.

I do not see the necessity of consulting the Attorney General. But it may be wise to have the benefit of his views. To my mind this is a very easy matter. We only want to apply to Porto Rico in a practical way the law in force in this country. Why should the Federal judge in Porto Rico grant a preliminary injunction when the constitutionality of a law is in issue? Why should he stop the payment of taxes on a preliminary injunction? I do not believe that is right, and the only thing we ask is to be protected by having two judges of the Supreme Court of Porto Rico that are appointed by the President of the United States to join the Federal judge in considering petitions for interlocutory and preliminary injunctions when the constitutionality of a law is in issue.

"MR. WILLIAMS. And your Government is certainly embarrassed?

"MR. DAVILA. Yes, by this injunction. Of course, it is not done now because we have a very good judge but it was done in the past and we need to be protected for the future.

"MR. UNDERHILL. Your section 6 meets the General's objection in that it specifically provides that the other two judges shall be the supreme court judges that are now resident in Porto Rico.

"MR. DAVILA. Yes; two supreme court judges that are now residents of Porto Rico appointed by the President.

"MR. WILLIAMS. I understand all the members of the committee are familiar with this and that you are going to appoint a subcommittee.

"THE CHAIRMAN. That is true. I think Mr. Davila will agree with us that a matter that is as important as this is should be reported to the Attorney General, because the Secretary of War does not want to take the responsibility of advocating this particular thing.

"MR. DAVILA. I say that we want to extend to Porto Rico the same thing we have in the United States, that is all.

"THE CHAIRMAN. At the conclusion of the meeting, I will appoint a subcommittee with the request that they go into all of these matters and that they consult with Judge Davila. He will be a member of the committee. And I hope they will report to the committee at an early date" (pp. 64-65).

## APPENDIX VII.

SECTION 3224, UNITED STATES STATUTES, IS APPLICABLE IN PORTO RICO.

*Extract from "Brief for Appellee" (this respondent) in these cases, in the Circuit Court of Appeals.*

### POINT I.

THE TRIAL COURT HAD NO JURISDICTION TO ENTERTAIN A SUIT TO RESTRAIN THE ASSESSMENT AND COLLECTION OF TAXES LEVIED UNDER THE "INTERNAL REVENUE LAW OF PORTO RICO."

Revised Statutes, Article 3224 (U. S. Compiled Statutes, 1916, Article 5947) provides as follows

"No suit, for the purpose of restraining the assessment or collection of any tax shall be maintained in any court."

We take the position that this article was intended to apply to all taxes levied by and under the authority of Congress, and hence must apply to Porto Rico. This section was originally enacted in 1867 and has always applied to taxes levied by Congress.

*State Railroad Tax Cases*, 92 U. S. 575, 613.

*Dodge v. Osborn*, 240 U. S. 118.

There is considerable doubt as to whether it applies to a suit in a Federal court to restrain the collection of a tax levied by a State.

*Wells v. Central Vermont Ry. Co.*, Fed. Cases No. 17390;

*Schulenberg Co. v. Hayward*, 20 Fed. 422.

But, on the other hand, it has been held to apply to a suit in equity in a Federal court to enjoin the collection of a municipal tax.

*Nye, Jenks & Co. v. Town of Washburn* (C. C. 1903), 125 Fed. 817.

But regardless of the application or non-application of this section to an injunction to restrain State taxes, it clearly applies to Porto Rico.

Porto Rico is an unincorporated territory.

*Balzac v. Porto Rico*, 258 U. S. 298.

As such it is under the direct tutelage and control of Congress, which has plenary power.

*Brunswick Nat'l Bank v. Yankton County*, 101 U. S. 129.  
*Interstate Commerce Commission v. United States*, 224 U. S. 474.

The government of the territory belongs primarily to Congress, and only secondarily to such agencies as Congress may establish (26 R. C. L. 671).

*Mormon Church v. United States*, 136 U. S.  
*Snow v. United States*, 18 Wall. 317.

A State is a sovereign; but a territory is a direct dependency of the National Government. In the last cited case touching the relation of a territory to the United States, Mr. Justice Bradley said:

"Strictly speaking, there is no sovereignty in a territory of the United States but that of the United States itself" (p. 321).

Under the Organic Act of Porto Rico, approved March 2, 1917 (39 Stat. 951), Congress specifically reserves the power and authority to annul any law passed by the Legislature of Porto Rico.

" . . . All laws enacted by the Legislature of Porto Rico shall be reported to the Congress of the United States, as provided in section 23 of this Act, which hereby reserves the power and authority to annul the same. . . ." (Section 34 of the Organic Act.)

In the same section it is provided that if a bill is passed over the veto of the Governor of Porto Rico, it shall be transmitted to the President of the United States, whose veto shall be final.

Every act of the Legislature of Porto Rico, therefore, is in effect an act of Congress itself.

*Snow v. United States*, *supra*, 18 Wall. 317.  
*Binns v. United States*, 194 U. S. 486.  
*De la Rama v. De la Rama*, 201 U. S. 303.

All judicial processes in the Island run in the name of the President of the United States (Organic Act of Porto Rico, Sec. 10). The United States District Court for Porto Rico is not a consti-

tutional court, but is one established by Congress under its power to govern acquired territories.

*Balzac v. Porto Rico*, 258 U. S. 298.

The supreme legislative body of Porto Rico is the Congress of the United States.

*Downes v. Bidwell*, 182 U. S. 244.

The People of Porto Rico do not constitute a sovereign power; all political authority of every nature whatsoever is derived from the Federal Government.

*Snow v. United States*, *supra*, 18 Wall. 317.  
26 R. C. L. 667, 669.

It follows from the above principles of law that the prohibition of section 3224, Revised Statutes, forbidding an injunction to prevent the collection of any tax to be maintained in any court applies directly to the internal revenue taxes of Porto Rico involved in this appeal, which taxes have been levied by the Legislature of Porto Rico, under the direct control and supervision of the Congress of the United States.

The case of restraining a State tax presents a different question. A State is itself an independent sovereignty. The States have all residual powers, and the original thirteen States delegated to the National Government its power. In the case of a territory the delegation of power is in the other direction, and is revocable at will. Congress is the supreme legislative body of the territory, but has delegated a limited amount of power to the Legislature of Porto Rico, over which it maintains close supervision. Congress legislates through the Legislature of Porto Rico, and participates directly in each act by its veto power.

A very close analogy to the relation of Congress to a territory and to the legislative body thereof, is found in the relation of a State of the United States to a municipality or county within its borders, and whose powers are derived from and defined by the State legislature. In *Brunswick Bank v. Yankton County*, *supra*, 101 U. S. 129, Mr. Justice Waite, in discussing the relation of a territory to the central government, said (at p. 133):



"All territory within the jurisdiction of the United States, not included in any state, must necessarily be governed by or under the authority of Congress. The Territories are but political subdivisions of the outlying dominion of the United States. *Their relation to the general government is much the same as that which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations.*

"Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. *In other words, it has full and complete legislative authorities over the People of the territories and all the departments of the territorial government.*" (Italics ours.)

Could it be successfully contended that a State statute exactly similar to Article 3224 would not apply to taxes levied by a municipality of the State. We believe not. The language of Article 3224 is broad, and is intended to cover *all* taxes levied by or under the authority of the United States.

*Howland v. Soule*, Fed. Cases 6800.

The law says that no injunction shall be entertained to restrain the assessment and collection of *any* tax. The language could scarcely be made more comprehensive, and the act must be taken to mean just what it says, and to lay down a broad and general principle. Certainly the Porto Rican internal revenue taxes are levied under the direct authority and supervision of the Federal Government; which can alter, amend, repeal, substitute or confirm them at will.

There can be no doubt but that the statutory laws of the United States apply to Porto Rico, for it is so stated specifically in Section 9 of the Organic Act of Porto Rico, which reads as follows:

"That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws: *Provided, however*, That hereafter all taxes collected under the internal-revenue laws of the United States on articles produced in Porto Rico and transported to the United States, or consumed in the Island shall be covered into the Treasury of Porto Rico."

Plainly this language extends Article 3224 to Porto Rico, unless it is an internal revenue law. But the very language of this article shows that its subject-matter is judicial, not internal revenue legislation. It has always been considered as of general application. Mr. Justice Miller says in *State Railroad Tax Cases*, *supra*, 92 U. S. 575, on page 613:

"That there might be no misunderstanding of *universality of this principle*, it was expressly enacted in 1867, that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' Rev. Stat. sect. 3224. And though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, *in any case*, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice. See *Cheatham v. Norvell*, decided at this term; *Nickoll v. United States*, 7 Wall. 122; *Dowd v. Chicago*, 11 Wall. 108." (*first italics supplied.*)

See also,

*McDowell v. Heiner*, 9 Fed. (2d) 120.

JUSTICE MILLER HIMSELF ITALICIZED THE WORDS "*in any case*," THUS INDICATING THE TRUE SENSE OF ARTICLE 3224, WHICH MORE PROPERLY BELONGS IN THE JUDICIAL CODE THAN ELSEWHERE.

*That this article is a separate and general statute is further shown from its history.* It was originally enacted as a part of Section 10 of an act approved March 2, 1867, entitled, "An Act to amend existing laws relating to internal revenue, and for other purposes." (Ch. 169, 14 Stat. at Large, 475.) *But when the United States Statutes were revised, Article 3224 was withdrawn from its context and made a separate article, and the word "any" was inserted before the word "tax."* Clearly, then, Congress must have regarded it as a general statute, and extended it to Porto Rico by Section 9 of the Organic Act, above quoted.

## APPENDIX VIII.

### REGULATIONS OF PORTO RICAN TREASURY DEPARTMENT

#### DEPARTMENT OF FINANCE OFFICE OF THE TREASURER

October 13, 1925.

TO INTERNAL REVENUE AGENTS, COLLECTORS AND OTHERS  
CONCERNED:

#### REGULATION NO. 2

TO AMEND SECTION 1 AND REPEAL SECTIONS 5  
AND 8 OF "REGULATION NO. 1 PROMULGATED  
BY THE TREASURER OF PORTO RICO BY VIRTUE  
OF THE PROVISIONS OF SECTIONS 65 AND 73 OF  
ACT NO. 85, KNOWN AS 'INTERNAL REVENUE  
LAW OF PORTO RICO,' APPROVED AUGUST 20,  
1925, FOR MANUFACTURERS AND DEALERS  
WHO EFFECT SALES SUBJECT TO SECTION 62  
OF SAID ACT," APPROVED OCTOBER 1, 1925.

Section 1.—Every person required to pay the tax prescribed by Section 62 of the Internal Revenue Law in force, who sells to any dealer or to any manufacturer articles subject to the payment of the said tax, shall furnish same with an invoice covering each sale, containing the following information: date of sale, full name of purchaser, address of same, each and every article sold (except those not subject to the 2 per cent tax), price of the same, specifying on each invoice the amount of tax collected by him; Provided, however, that the tax shall be collected from the person making the first sale and in the manner hereinafter prescribed. The said invoice shall be numbered consecutively in the order in which the same had been issued and copy thereof shall be kept at his place of business subject to inspection by the Treasurer of Porto Rico or his agents.

Section 2.—Every dealer or manufacturer who makes purchases in Porto Rico from other dealers or manufacturers, shall obtain from the vendor an invoice containing all the information

specified in the preceding section, and shall keep the same at his place of business subject to inspection by the Treasurer of Porto Rico or his agents.

Section 3.—Every dealer or manufacturer who makes purchases upon which the 2 per cent tax has been paid, shall keep a book in which he shall enter the invoices covering such purchases, in the following manner:

- (a) Date of purchase. (As per vendor's invoice.)
- (b) Number of invoice. (The serial number given by the purchaser to the invoice received from the vendor.)
- (c) Full name of vendor.
- (d) Amount of invoice. (Excluding tax.)
- (e) Sales tax paid by vendor.

Section 4.—Every dealer who makes sales the total amount of which shall exceed one hundred (100) dollars a month and all manufacturers, regardless of the total amount of their sales, shall provide themselves with the official book known as "Libro Oficial para la Contribución del dos por ciento Sobre Ventas."

Section 5.—(Repealed.)

Section 6.—The "Declaration of Sales" shall be made out in duplicate by placing a carbon paper between the original and the duplicate, so that the entries made on the original shall clearly appear on the copy thereof.

Section 7.—In the "Declaration of Sales" there shall be entered at the close of business each day the amount of sales made, excluding therefrom those upon which the 2 per cent sales tax has been paid at the time of purchase, and at the close of the month a total of all sales shall be recorded and the tax of 2 per cent on the total amount given, shall be paid in internal revenue stamps, which shall be cut in two, so that one-half of each stamp may be attached to the original Declaration and the other half to the duplicate. The stamp shall be cut so that the serial number appearing thereon in duplicate may remain intact on each half. The stamps shall be cancelled with a dating stamp and the original "Declaration of Sales," duly sworn to, shall be delivered to the Internal Revenue Agent of the district, or to the Collector.

Section 8.—(Repealed.)

Section 9.—The “Libro Oficial para la contribución del dos por ciento sobre las Ventas” (Official book for the payment of the 2 per cent Sales Tax) shall contain sufficient declarations to last one year and upon being used up, the manufacturer or dealer shall fill out the application blank to be found on the next to the last sheet of the book and forward same to the Treasurer of Porto Rico who will furnish a new book. Until this new book is received the last declaration of sales shall be used for the recording of such sales as may be made during the first days of the month, which sales shall be transferred to the new book immediately upon receipt of same.

Section 10.—Manufacturers shall not be exempted from the payment of the 2 per cent tax on the sale of articles manufactured by them and upon which the 2 per cent tax may have been previously paid by the vendor on the raw materials used as component parts thereof, but in computing the tax to be paid by the manufacturer, the tax paid by the vendor on such raw materials or component parts acquired by the manufacturer, shall be considered.

Section 11.—This Regulation shall be effective from and including October 1, 1925.

(Signed) JUAN G. GALLARDO,  
*Treasurer of Porto Rico.*

I, Juan G. Gallardo, Treasurer of Porto Rico, do hereby certify that the foregoing is a true and correct translation of Regulation No. 2 promulgated by the undersigned October 13, 1925.

San Juan, Porto Rico, October 14, 1925.

JUAN G. GALLARDO,  
*Treasurer of Porto Rico.*